

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

Joint Appendix

IN THE
UNITED STATES COURT OF APPEALS

For The District of Columbia Circuit

No. 18447

965

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL
UNION NO. 175, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition to Review and Set Aside An Order
of the National Labor Relations Board

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 10 1964

Nathan J. Paulson
CLERK

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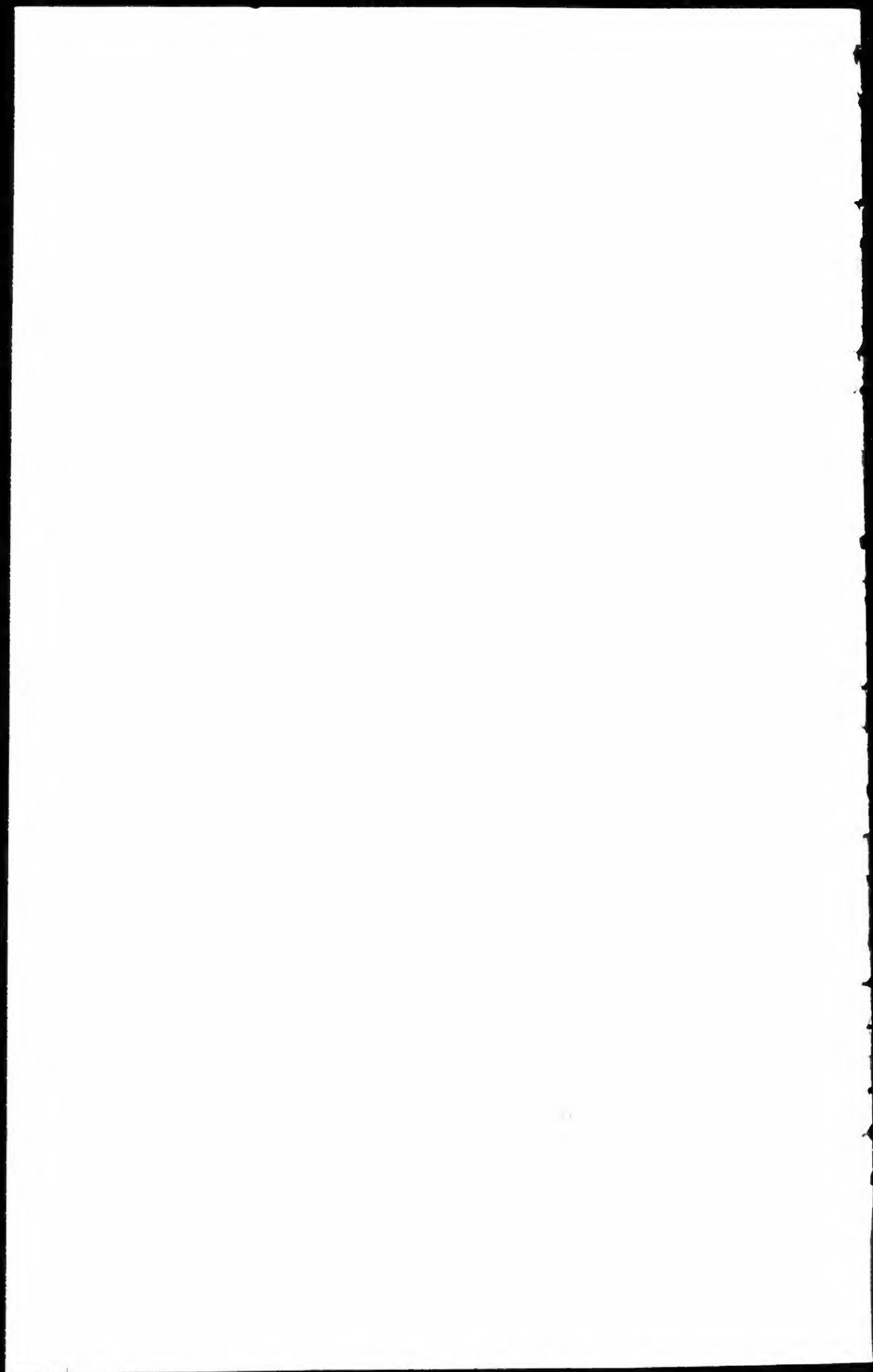


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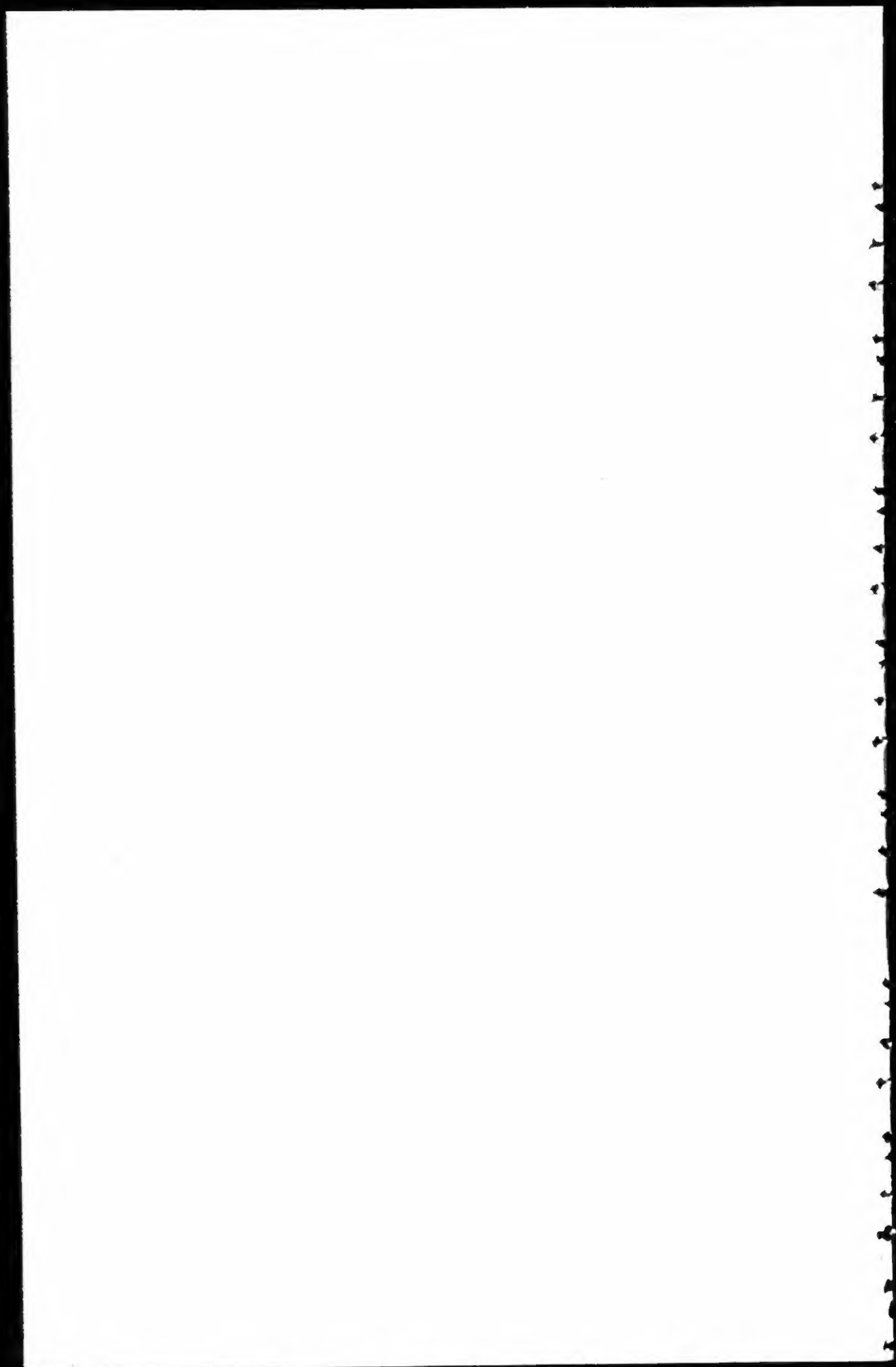
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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 9-CA-2716

Date Filed: October 15, 1962

1. Employer Against Whom Charge is Brought

Name of Employer: Pepsi-Cola Bottling Co.,
Beckley, West Virginia

Address of Establishment: (Street and number, city, zone, and State) Stanaford Road, Beckley, W. Va.

Number of Workers Employed: Approximately 6

Type of Establishment (Factory, mine, wholesaler, etc.) Soft Drink Bottling Co.

Identify principal product or service: Pepsi Cola

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and 3 and 5 of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) In and about October, 1961, and at all times material herein, the Employer has interfered with, restrained, and coerced his employees in the exercise of their rights guaranteed under the Act. Said Employer discharged employees because of their union membership and has thereby discriminated against them in order to discourage membership in the Union. Said Employer has moved his operations from their location in Beckley, W. Virginia, in reprisal against his employees joining the Union. Said Employer has refused to bargain with the Union which represents a majority of its employees, notwithstanding the fact that he had full knowledge of the employees' designation of the Union as their collective bargaining representative. By these and other acts, said Employer has violated and continues to violate the Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number) Chauffeurs, Teamsters & Helpers, Local Union #175.

4. Address (Street and number, city, zone and State) P. O. Box 589, Charleston 22, W. Va.

Telephone No.: 925-2196

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: Robert D. Jackson (Signature of representative or person filing charge)

(Title, if any): Business Representative

(Date) October 11, 1962

Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 1001).

GPO 908025

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER
AMENDED

INSTRUCTIONS: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 9-CA-2716

Date Filed: November 27, 1962

1. Employer Against Whom Charge Is Brought

Name of Employer: Pepsi-Cola Bottling Co.,
Beckley, West Virginia

Address of Establishment (Street and number, city, zone, and State) Stanaford Road, Beckley, W. Va.

Number of Workers Employed: Approximately 6

Type of Establishment (Factory, mine, wholesaler, etc.) Soft Drink Bottling Company

Identify principal product or service: Pepsi-Cola

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and 3 and 5 of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) (1) On or about August 29, 1962, the Employer warned employees to vote out the union, and further told them they would not have jobs if the union won the election, as the Employer would lock the door before he would deal with the union. (2) On or about the same date the Employer made promises of benefit to its employees if they voted the union out. (3) That on or about October 5, 1962, and since such dates, the Employer discriminated against Jackson Brown, John Davis, Kenneth Keffer, Ronald Keffer, Bill Lukach, and Dallas Milam by sending them home early, discharging them, or laying them off because of their membership and activity on behalf of the union. (4) That on or about October 10, 1962, the Employer announced that all employees were terminated and that it was closing down its Beckley, West Virginia plant. Such lock-out being for the purpose of discriminating against all such employees because they had joined the union on October 5, 1962, and in order to refrain from recognizing and bargaining with the union.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number) Chauffeurs, Teamsters & Helpers, Local Union #175.

4. Address (Street and number, city, zone, and State) P. O. Box 589, Charleston 22, W. Va.

Telephone No. 925-2196

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

6. Address of National or International, if any (Street and number, city, zone and State)
25 Louisiana Avenue, N. W., Washington 1, D. C.

Telephone No. Sterling 3-0525

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: Robert D. Jackson (Signature of representative or person filing charge)

(Title, if any) Business Representative

(Date) November 26, 1962

Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 80)

GPO 943301

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
NINTH REGION

In the Matter of

PEPSI COLA BOTTLING
COMPANY OF BECKLEY, INC.

and

Case No. 9-CA-2716

CHAUFFEURS, TEAMSTERS &
HELPERS, LOCAL UNION #175
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

COMPLAINT AND NOTICE OF HEARING

It having been charged by Chauffeurs, Teamsters & Helpers, Local Union #175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, that Pepsi Cola Bottling Company of Beckley, Inc., herein called the Respondent, has engaged in, and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Ninth Region, pursuant to Section 10(b) of the Act and the Board's

Rules and Regulations, Series 8, as amended, Section 102.15, hereby issue this Complaint and alleges as follows:

1. The Charge and Amended Charge were filed by the Union on October 15, 1962, and November 27, 1962, respectively, and were served on the Respondent by registered mail on October 15, 1962, and November 30, 1962, respectively.

2. (a) The Respondent, a West Virginia corporation, is engaged at its plant in Beckley, West Virginia, in the bottling and distribution of carbonated beverages.

(b) During the past calendar year, which is a representative period, the Respondent had an inflow of goods and materials in interstate commerce valued in excess of \$50,000, which were purchased and shipped to its said plant from points outside the State of West Virginia.

(c) At all times material herein, the Respondent is and has been an "employer" as defined in Section 2(2) of the Act, engaged in "commerce" and operations "affecting commerce" as defined in Sections 2(6) and (7) of the Act, respectively.

3. At all times material herein, the Union is and has been a labor organization as defined in Section 2(5) of the Act.

4. (a) Now and at all times material herein, H. P. Hunnicutt, herein called Hunnicutt, is and has been executive vice-president of the Respondent, an agent acting on its behalf and a supervisor as defined in Section 2(11) of the Act.

(b) Now and at all times material herein, Kyle C. Smith, herein called Smith, the Plant Manager for Respondent is, and has been an agent acting on its behalf and a supervisor as defined in Section 2(11) of the Act.

5. On or about the date indicated below, the Respondent at its said Beckley plant, unless otherwise indicated, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, by:

(a) The conduct of said Hunnicutt on or about August 29, 1962, at Princeton, West Virginia, in threatening its employees with discharge, and threatening to close the plant if the Union won the forthcoming election.

(b) The conduct of said Hunnicutt on or about August 29, 1962, at Princeton, West Virginia, in promising its employees that they would be granted benefits if they voted against the Union in the forthcoming election.

(c) The conduct of said Smith, on or about October 6, 1962, in soliciting written statements, from respondent's employees, which identified them as sympathizers or members of the Union.

6. (a) On or about October 6, 1962, Respondent discharged Kenneth Keffer and at all times thereafter failed and refused to reinstate him to his former position because of his membership in and activities in behalf of the Union.

(b) On or about October 12, 1962, Respondent terminated its operations at said plant and thereby discharged Jackson Brown, Ronald Keffer, John

Davis, Bill Lukach and Dallas Milam; the said Davis, Lukach and Milam, at the time, were employees in a temporary lay-off status, with a reasonable expectancy of recall.

(c) Respondent terminated its operations at said plant on October 10, 1962, and thereby discharged the employees named above because of their sympathy for, membership in, and activities on behalf of the Union, and for the purpose of (i) destroying the Union's status as the representative of said employees; and (ii) avoiding its obligation of bargaining with the Union as such representative.

7. At all times material herein, a unit of Respondent's employees at its said plant, appropriate for the purposes of collective bargaining consisted of all drivers and plant employees, excluding all office clericals, guards and supervisors as defined in the Act.

8. On or about October 5, 1962, a majority of Respondent's employees in said unit designated or selected the Union as their exclusive representative for the purposes of collective bargaining with the Respondent and at all times since said date, the Union has been, and is now, the exclusive representative for all employees in the said unit for the purpose of collective bargaining with the Respondent as to rates of pay, wages, hours, and other terms and conditions of employment.

9. On or about October 5, 1962, the Union requested Respondent to recognize and bargain with it as such exclusive bargaining representative with respect to rates of pay, wages, hours and other conditions of employment of the said employees in the said unit.

10. Since on or about October 5, 1962, the Respondent has refused to recognize and bargain collectively in good faith with the Union as the exclusive representative of its employees by:

(a) Refusing to grant recognition to the Union as the majority representative of its said employees.

(b) Refusing to meet with the Union to discuss wages, hours, and other conditions of employment of its said employees.

(c) Unilaterally closing its Beckley, West Virginia plant.

(d) Engaging in the conduct described in paragraphs 5 and 6 above.

11. By the acts and conduct alleged above, the Respondent has engaged in, and is engaging in unfair labor practices as defined in Section 8(a)(1), (3) and (5) of the Act, affecting "commerce" as defined in Section 2(6) of the Act.

PLEASE TAKE NOTICE that on the 12th day of February 1963, at 10 o'clock in the forenoon (EST), in the County Court Room, Raleigh County Court House, in Beckley, West Virginia, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations of the foregoing Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall

file with the undersigned Regional Director, acting in this matter as an agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations of the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.

Dated at Cincinnati, Ohio, this 14th day of December, 1962.

John C. Getreu, Regional Director
Ninth Region, National Labor Relations Board
1200 Transit Building, 6 E. Fourth Street
Cincinnati 2, Ohio

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
NINTH REGION

In the Matter of

PEPSI COLA BOTTLING
COMPANY OF BECKLEY, INC.

Employer

and

Case No. 9-RC-4997

CHAUFFEURS, TEAMSTERS &
HELPERS LOCAL NO. 175,
AFFILIATED WITH INTER-
NATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

Petitioner

SUPPLEMENTAL DECISION,
ORDER DIRECTING HEARING,
ORDER CONSOLIDATING CASES,
NOTICE OF HEARING
AND
ORDER TRANSFERRING CASE TO THE BOARD

On August 31, 1962, pursuant to the provisions of a Decision and Direction of Election, herein called the Direction, dated August 1, 1962, an election by secret ballot was conducted in the above-entitled proceeding among the employees in the unit set forth in the Direction 1/ to determine whether or not such employees desired to be represented for the purposes of collective bargaining by the Petitioner.

Upon the conclusion of the election, a Tally of Ballots 2/ was furnished to the parties in accordance with the Rules and Regulations of the National Labor Relations Board, herein called the Rules and the Board, respectively, disclosing the following results:

- 1/ The Direction sets forth the appropriate collective bargaining unit as follows: "All truck drivers and warehouse employees of the Employer at Beckley, West Virginia, but excluding all office clerical employees, guards and supervisors as defined in the Act.
- 2/ Service of the Tally of Ballots was acknowledged by the authorized observer for the Employer. The Tally of Ballots was personally served upon an agent of the Petitioner by an agent of the undersigned on August 31, 1962. The Observer for the Employer signed a certificate that the balloting was fairly conducted and that all eligible voters were given an opportunity to mark their ballots in secret and that the ballot box was protected in the interest of a fair and secret vote.

Approximate number of eligible voters <u>3/</u>	16
Void ballots	0
Votes cast for Petitioner	4
Votes cast against Petitioner	8
Valid votes counted	12
Challenged ballots <u>4/</u>	1
Valid ballots counted plus challenged ballots	13

The Petitioner, on September 7, 1962, filed timely Objections to the Election, herein called Objections, which were served on the Employer in conformity with said Rules.

Pursuant to the provisions of Section 102.69 of the said Rules, an investigation of the various issues raised by the Objections was conducted under the direction and supervision of the undersigned, who, after carefully considering all of the evidence, makes the following report and findings.

- 3/ As the original Tally of Ballots erroneously showed the approximate number of eligible voters to be 17, I hereby amend the Tally of Ballots to show the approximate number of eligible voters to be 16.
- 4/ Since the challenged ballot cannot affect the results of the election, no report or recommendation with respect to such challenge will be made in this decision.

THE OBJECTIONS: 5/

The Petitioner's Objections allege, in substance, that the Board Agent conducting the election refused to accept challenges to the ballots of seven (7) voters 6/ who, the Petitioner contends, are replacements for unfair labor practice strikers.

The Petitioner, contrary to the Employer, contends that the alleged unfair labor practice strikers who commenced picketing at the Employer's place of business on May 17, 1962, are entitled to an absolute right to reinstatement and that, therefore, their replacements were ineligible to vote. It further contends that the Board Agent had no right to refuse to accept its challenges because of its pending request for review of my dismissal of the charges in Case No. 9-CA-2631. The charges in Case No. 9-CA-2631 alleged, inter alia, that the replaced strikers were unfair labor practice strikers.

On August 1, 1962, I dismissed these charges and on October 3, 1962, the General Counsel sustained my dismissal and found that further proceedings were unwarranted.

5/ The undersigned requested that each of the parties submit statements of position with respect to the Objections and evidence in support of such positions. The Employer complied with this request. The Petitioner submitted only a statement of position in support of such Objections.

6/ Those voters are: Jackson Brown, Robert Brown, Jack Goad, Kenneth Keffer, Bill Lukach, Dallas Milam and Everett Waddell.

In view of the above and in accord with the Direction, I find that the strikers involved are economic strikers and that their replacements, absent other disqualifications, were eligible to vote.

In its statement of position, the Petitioner further contends that Jack Goad and Dallas Milam were ineligible to vote because they were employed by the Employer after the payroll period for eligibility; that Robert Brown was ineligible to vote because he terminated his employment prior to the day of the election; and that Everett Waddell was ineligible to vote because he was not an employee of the Employer and, thus, not in the voting unit. The Petitioner submitted no evidence in support of these alternate contentions. Nevertheless, and even though they were not alleged as a part of the Objections, I have broadened my investigation, to the extent necessary, to include the consideration of these contentions.

The payroll period immediately preceding the date of the Direction ended on July 26, 1962. The investigation shows that Goad and Milam were employed as replacements, and within the unit, by the Employer on July 23, 1962, and July 20, 1962, respectively, and that both were still so employed on the day of the election. Accordingly, I find that Goad and Milam were both eligible to vote in the election. 7/

7/ See Greenspan Engraving Corp., 137 NLRB
No. 135

In view of the above and of the results shown on the Tally of Ballots, I find that a determination as regards the eligibility of Brown and Waddell is unnecessary as such could not affect the results of the election. 8/

The Petitioner filed a charge on October 15, 1962, and an amended charge on November 27, 1962, in Case No. 9-CA-2716, alleging, in effect and inter alia, that the Employer's vice-president, H. P. Humnicutt, told its employees on August 29, 1962, that the Employer would close its plant if the Petitioner won the election, and that the Employer would improve their working conditions and would actively assist them in increasing their sales if the Petitioner was defeated.

After careful consideration of the evidence submitted by the parties in this proceeding and in the currently pending unfair labor practice case (9-CA-2716), I find that the evidence submitted by the Petitioner supports the above mentioned allegation which, if true, would be a sufficient ground for setting the election aside. 9/ However, the

8/ During the course of the investigation, the Employer questioned the eligibility of Richard Heath, one of the alleged economic strikers. I also find that a determination as regards his eligibility is unnecessary as such could not affect the results of the election.

9/ Although this allegation was not set forth in the Petitioner's Objections, it is well established that I am not limited by the Objections and may consider evidence which comes to my attention during investigation. Lake Catherine Footwear, Inc., 133 NLRB 443.

evidence submitted by the Employer constitutes a denial of this allegation and raises a substantial and material issue of fact which, in the opinion of the undersigned, can best be resolved by the conduct of a hearing. Inasmuch as this same allegation, in substance, is the subject of an unfair labor practice Complaint in Case No. 9-CA-2716, being issued simultaneously herewith, I have, as hereinafter provided, consolidated this issue of fact with the unfair labor practice case for hearing.

CONCLUSION, ORDER DIRECTING HEARING,
ORDER CONSOLIDATING CASES, NOTICE OF
HEARING AND ORDER TRANSFERRING CASE TO
THE BOARD:

For the reasons fully set forth above, it is hereby Ordered that the Petitioner's Objections be, and they are overruled; and

IT IS FURTHER ORDERED that a hearing be held to resolve the issue of fact raised by the additional Objections discussed above.

IT IS FURTHER ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that the above-entitled matter be and is hereby consolidated with Case No. 9-CA-2716 against Pepsi Cola Bottling Company of Beckley, Inc., now scheduled for hearing before a Trial Examiner of the National Labor Relations Board on the 12th day of February, 1963, at 10:00 o'clock in the forenoon (Eastern Standard Time) in the County Court Room, Raleigh County Court House in Beckley, West Virginia. The Trial Examiner designated for the purpose of conducting the aforesaid hearing shall prepare and cause to be served upon

the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations as to the disposition of the issue of fact discussed above. Upon the issuance of the said report by the Trial Examiner, pursuant to Section 102.67 of the aforementioned Rules and Regulations,

IT IS FURTHERED ORDERED, that the above-entitled case be transferred to and continued before the Board in Washington, D.C. and that the provisions of Section 102.46 and 102.67(e) of the aforementioned Rules shall govern the filing of exceptions to the report and recommendations of the Trial Examiner.

Dated at Cincinnati, Ohio, this 14th day of December, 1962.

John C. Getreu, Regional Director
National Labor Relations Board, Ninth Region
1200 Transit Building, 6 East Fourth Street
Cincinnati 2, Ohio

NATIONAL LABOR RELATIONS BOARD
NINTH REGION

CHAUFFEURS, TEAMSTERS &
HELPERS, LOCAL UNION #175,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

Complainant

v.

Case No. 9-CA-2716

PEPSI-COLA BOTTLING COMPANY
OF BECKLEY, INC.

Respondent.

ANSWER OF THE RESPONDENT

I.

The Respondent admits the allegations contained in Paragraph 1 of the Complaint and Notice of Hearing.

II.

The Respondent admits the allegations contained in Paragraph 2(a) of the Complaint and Notice of Hearing.

The Respondent admits the allegations contained in Paragraph 2(b) of the Complaint and Notice of Hearing.

The Respondent admits the allegations contained in Paragraph 2(c) of the Complaint and Notice of Hearing.

III.

The Respondent admits the allegations contained in Paragraph 3 of the Complaint and Notice of Hearing.

IV.

The Respondent admits the allegations contained in Paragraph 4(a) of the Complaint and Notice of Hearing.

The Respondent admits that Kyle C. Smith is and has been an agent acting on its behalf and a supervisor within the purview of the National Labor Relations Act. However, his proper title is "Sales Manager", not "Plant Manager" as alleged in Paragraph 4(b) of the Complaint and Notice of Hearing.

V.

The Respondent denies the allegations contained in Paragraph 5(a) of the Complaint and Notice of Hearing.

The Respondent denies the allegations contained in Paragraph 5(b) of the Complaint and Notice of Hearing.

The Respondent denies the allegations contained in Paragraph 5(c) of the Complaint and Notice of Hearing.

VI.

The Respondent denies the allegations contained in Paragraph 6(a) of the Complaint and Notice of Hearing.

The Respondent denies the allegations contained in Paragraph 6(b) of the Complaint and Notice of Hearing.

VII.

The Respondent admits the allegations contained in Paragraph 7 of the Complaint and Notice of Hearing.

VIII.

The Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 8 of the Complaint and Notice of Hearing and, therefore, denies them and requires strict proof thereof.

IX.

The Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 9 of the Complaint and Notice of Hearing and, therefore, denies them and requires strict proof thereof. In addition, and by way of affirmative defense, the Respondent alleges that it had no employees, other than Kyle C. Smith and Russell Blevens, beyond October 4, 1962.

The Respondent admits the allegations contained in Paragraph 10(a) of the Complaint and Notice of Hearing. However, the Respondent alleges that it was under no duty to recognize or to bargain collectively in good faith with the Complaint on and after October 5, 1962, since the Complaint did not and does not represent any of the employees of the Respondent.

The Respondent admits the allegations contained in Paragraph 10(b) of the Complaint and Notice of Hearing. However, the Respondent alleges that it was under no duty to meet with the Complaint to discuss wages, hours and other conditions of employment since the Complainant did not and does not represent any of the employees of the Respondent.

The Respondent admits the allegations contained in Paragraph 10(c) of the Complaint and Notice of Hearing. However, the Respondent alleges that it was under no duty to keep in operation the Beckley, West Virginia, plant because of the economic collapse of the Respondent and because of the inability of the Respondent to complete the construction of said plant.

The Respondent denies the allegations contained in Paragraph 10(d) of the Complaint and Notice of Hearing.

The Respondent denies the allegations contained in Paragraph 11 of the Complaint and Notice of Hearing.

Frank L. Taylor, Jr.
Of Counsel for Pepsi-Cola
Bottling Company of Beckley, Inc.

KAY, CASTO & CHANEY
Frank L. Taylor, Jr.
511 Charleston National
Bank Building
Charleston, West Virginia

A copy of the foregoing was served this 21st day of December, 1962, by mail to the Complainant, Chauffeurs, Teamsters & Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Post Office Box 589, Charleston 22, West Virginia.

Frank L. Taylor, Jr.

**EXCERPTS FROM
OFFICIAL REPORT OF PROCEEDINGS**

**Before the
National Labor Relations Board
Ninth Region**

**In the Matter of
PEPSI COLA BOTTLING COM-
PANY OF BECKLEY, INC.**

and

**CHAUFFEURS, TEAMSTERS AND
HELPERS LOCAL UNION No. 175,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA**

Case No.

9-CA-2716

**Criminal Court Room
Raleigh County Court House
Beckley, West Virginia
Tuesday, February 12, 1964**

**Pursuant to notice, the above-entitled matter came
on for hearing, at 10:00 o'clock a.m.**

BEFORE:

Eugene F. Frey, Esq., Trial Examiner.

APPEARANCES:

**Cassius B. Gravitt, Jr., 1200 Transit Building,
Cincinnati, Ohio, appearing on behalf of the General
Counsel, National Labor Relations Board.**

James Zazzali, Esq., 100 Indiana Avenue, N.W., Washington, D.C., appearing on behalf of the Charging Party.

Frank L. Taylor, Jr., Esq. of Kay, Casto & Chaney, 511 Charleston National Bank Building, Charleston, West Virginia, appearing on behalf of the Respondent.

10

KERMIT HARRIS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * *

14.

Direct Examination:

By Mr. Gravitt:

Q. Are you associated with Local 175?

A. Yes, sir, I am.

Q. In what Capacity?

A. My classification is Business Representative.

Q. And how long have you served in this capacity?

A. Just over three years, sir.

Q. Are you located here in Beckley?

A. That's right. Raleigh County, 2009 Harper

Road.

Q. Do you know the present location of the Respondent's plant here in this area?

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A. Yes, sir.

Q. Will you tell us where it is, please?

A. It's located on Stanaford Road, approximately four miles north of Beckley.

Q. Do you know how long it has been at that location, sir?

A. Well, since the fall of '61, summer of '62.

* * * * *

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Q. Now, do you recall, sir, where the Beckley plant was located prior to the Stanaford Road location?

A. I know approximately, yes, sir.

Q. Will you tell us, please?

A. Well, it was located on the south section of the City of Beckley - was located in the south section of the City of Beckley. I believe it is called an Armour & Company building that is adjacent to it.

Q. Is this the building from which the Respondent moved to the Stanaford Road location?

A. That is correct, sir.

Q. Do you recall, Mr. Harris, whether any bottling was conducted in the old location?

A. It's my understanding that it was, yes.

MR. TAYLOR: I object, your Honor, unless he knows. I further object to the relevancy of the entire line of questioning.

TRIAL EXAMINER: I'll overrule the objection.

By Mr. Gravitt:

Q. Mr. Harris, did you ever become interested in organizing the employees of the Respondent?

A. I have--I did.

Q. Do you recall approximately when you developed such an interest?

MR. TAYLOR: I object to the question before it's

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answered, your Honor.

TRIAL EXAMINER: On what grounds?

MR. TAYLOR: I object on the grounds that it is not relevant to this hearing, when he became interested first in organizing.

TRIAL EXAMINER: Overruled.

You may answer.

By Mr. Gravitt:

Q. You may answer, sir

A. Well, it was in May of '62, 1962.

Q. Did you do anything about it, sir?

A. I did.

Q. Just tell us what you did, please.

A. My first encounter with the employees out there was through a reporter of the Beckley Newspaper Corporation. He called me on the phone one morning--

MR. TAYLOR: Object to what the reporter said.

TRIAL EXAMINER: I don't think we need all the details, and how he got in touch with them.

When was the first time you met with any employees of the plant?

THE WITNESS: The 16th day of May, 1962.

By Mr. Gravitt:

Q. Will you --

TRIAL EXAMINER: Where?

THE WITNESS: At my home and office on Harper Road, and at Sophia, West Virginia, which is just west of Beckley.

TRIAL EXAMINER: All right.

Proceed.

By Mr. Gravitt:

Q. Now, will you describe to us briefly, please, sir, the nature of such contact?

A. I first was in contact with Jack Cook, who was employed by Pepsi-Cola Bottling Company of Beckley, and then through Mr. Cook I contacted the additional employees out there.

Q. Do you know approximately --

TRIAL EXAMINER: What do you mean by additional employees?

THE WITNESS: The -- Well, the drivers and warehousemen.

I contacted Mr. Cook at my home, he contacted me; and Robert Arden, I contacted him at his home; Jim McDowell, Hobert Murdock, Al Murdock and Dick Heath, I talked to them at Sophia, West Virginia.

By Mr. Gravitt:

Q. And the employees that you have referred to, did they work at this Beckley operation, sir?

A. They did.

Q. Did you have contact with all the employees there, sir?

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A. With the exception of Ronald Keffer. He was employed as a warehouseman, as I understand. I didn't talk to Ronald Keffer.

Q. Did you have any negotiating sessions concerning the employees you have referred to?

A. The employees at the time requested that I represent them. There was a labor problem between the Employer and his employees at his place of business on Stanaford Road, and these employees asked me if I would represent them in attempting to straighten out their grievances.

Q. Did you represent them?

A. I assured them I would. I told them what necessary steps had to be taken in order for me to be able to represent them.

Those employees signed card which is a -- when I speak of a card, I mean an application which says "I wish to become a member of the Union, and to be represented for the purpose of collective bargaining?" Those employees signed those applications.

TRIAL EXAMINER: What do you mean -- Who do you mean by those employees?

THE WITNESS: The employees I named, sir.

TRIAL EXAMINER: That's six of them.

THE WITNESS: Right, sir.

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TRIAL EXAMINER: Cook, Arden, McDowell, two Murdocks, and Keefe?

THE WITNESS: Heath.

THE WITNESS: Richard Heath.

By Mr. Gravitt:

Q. Did you represent a majority of the employees?

A. As I understand it, with the exception of one. That's including your truck drivers and warehousemen.

Q. Yes. Now, did you arrive at any conclusion in representing these employees?

A. It was their desire that I represent them. And I informed the men what necessary steps had to be taken. That I would have to contact the Employer, ask him for recognition, and if he refused then we would have to petition the National Labor Relations Board, Ninth Region, Cincinnati, to conduct an election.

Q. Well, did you ever inform the Employer that you represented these employees?

A. The following morning.

Q. What following morning, now; will you tell us?

A. This was Thursday, May 17th.

I called Mr. H. P. Hunnicutt.

Q. And who is he?

A. As I -- I believe his title is General President

Q. Will you just tell us briefly what you said to Mr. Hunnicutt, and what he said to you?

A. Well, I called him, I called Mr. Hunnicutt on the morning, and I told him that I represented a majority of his employees at Beckley.

Mr. Hunnicutt immediately --

MR. TAYLOR: Object to what he said, and I object to what Mr. Hunnicutt said.

TRIAL EXAMINER: Overruled.

A. (Continued) Mr. Hunnicutt immediately told me with profanity that he didn't have any employees in Beckley, West Virginia; that they had quit.

I said, "Well, I understand they are employed by you, and I'm officially notifying you that I represent a majority of your employees, and I would like to come to Princeton and discuss a working agreement with the employees".

I, also, told him I understood that the -- that his equipment was not running, and I would like to discuss getting the trucks back on the road immediately.

Mr. Hunnicutt refused in no uncertain terms. He said as far as he was concerned we had nothing to discuss.

By Mr. Gravitt:

Q. Well, now, Mr. Harris, in order to shorten

this matter, did you and the employees have any further discussions?

A. Well --

Q. Now, I'm still referring to the employees that you have named earlier in your testimony.

A. Yes.

Q. And what did you decide to do, if anything?

A. Well, when Mr. Hunnicutt refused to discuss this situation with me, I immediately proceeded to the group of employees that were waiting for me at the Kroger parking lot on Valley Drive at Beckley. I told them their employer had refused to discuss the situation with me, and that we would proceed to the place of business and establish a picket line.

Q. And did you establish a picket line?

A. I did.

Q. And can you tell us approximately what date this took place?

A. It was on Thursday, May 17th.

Q. As to your knowledge, did the Employer cease operations at that time?

A. At that time, he did, yes.

Q. How long did this event take place? How long was he shut down?

A. Well, from that operation I would say approximately two weeks.

Q. You mentioned filing for an election. Do you recall

that?

A. Filing for an election?

Q. With the N.L.R.B.

A. I did; the morning I talked with Mr. Hunnicutt.

Q. And was an election conducted?

A. It was.

MR. GRAVITT: I wonder if we could just stipulate that an election was conducted by the N.L.R.B. on August 31st, 1962?

MR. TAYLOR: I'll stipulate.

Don't you think, Mr. Gravitt, that we ought to certify that we're all stipulating the results of the election, that the results were certified by the Board, so forth?

TRIAL EXAMINER: I think we can shortcut this, because I have the responsibility here of also making a report on objections to the election and the supplemental decision of the Regional Director, which is part of the pleadings in this case, states what the facts are.

MR. GRAVITT: We have no objection to the stipulation.

TRIAL EXAMINER: I take judicial notice of all those things anyhow as to what the tally of the ballots were when the objections were filed, and the like of that.

So go ahead from there.

MR. GRAVITT: All right, sir.

By Mr. Gravitt:

Q. To your knowledge, did the Respondent hire replacements?

A. Are you referring to the replacements that I had applications for, the previous employees?

Q. No. You've talked about employees having a picket line.

A. Right.

Q. And then there was a period of shutdown.

A. Right.

Q. Now, I'm asking you did the Respondent ever employ any replacements and resume the operations?

A. He did.

Q. Do you know approximately when this happened, or can you recall it?

A. It was approximately two weeks after the picket line that I established at his place of business. The exact date, I cannot give you.

Q. Now, directing your --

TRIAL EXAMINER: Just a minute, before you go any further.

You say that the plant was shut down for about two weeks starting the date of picketing. Is that correct?

THE WITNESS: Yes, sir.

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TRIAL EXAMINER: Did you have the picket line there during the entire period of time the plant was shut down?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right. Go ahead.

By Mr. Gravitt:

Q. Well, in reference to the picket line, how many pickets did you have on duty at one time?

A. It would vary, from three to five.

Q. And what hours did you picket?

A. Normal work hours, approximately 7:00 o'clock in the morning until approximately 5:00 in the evening.

Q. Now, directing your attention to the question I've asked earlier, did the employer ever employ any

replacements?

A. Yes, he did.

Q. Did you ever have any contact with the replacements in regard to representing them?

A. Yes; that occurred on --

Q. Will you tell us when it first occurred, as you recall?

A. Well, the first contact was on October 4th and October 5th.

Q. Well, now, October 4th was on a Thursday. Does a Thursday sound about right, or --

MR. TAYLOR: Your Honor --

A. Yeah.

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MR. TAYLOR: -- I object to Mr. Gravitt testifying for the witness. He has already said it was on October 4th or 5th. There's no sense in pursuing it further.

TRIAL EXAMINER: Have you got a calendar there?

MR. GRAVITT: Yes. The General Counsel was just looking at the calendar here.

TRIAL EXAMINER: What does the calendar say? We can all take notice of what the calendar says was October 4th, 1962.

MR. GRAVITT: Thursday.

TRIAL EXAMINER: All right.

MR. GRAVITT: October 4th, 1962.

TRIAL EXAMINER: All right.

Now, the witness knows that fact.

MR. GRAVITT: Yes.

TRIAL EXAMINER: Go ahead with your questions.

MR. GRAVITT: I appreciate that. We're getting to the point in the record where we may have testimony where they talk about a Thursday or Friday after that.

TRIAL EXAMINER: You have stated that it's Thursday, October the 4th, and it's in the record.

MR. GRAVITT: I thank your Honor for it.

TRIAL EXAMINER: Now, go ahead.

By Mr. Gravitt:

Q. Now, will you describe for the Trial Examiner,

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please, what contact you had on October the 4th with any of the replacements?

A. Mr. Dallas Milam contacted me on October 4th, and requested to become a member of Teamsters Local 175.

Q. Well, did you do anything about the request?

A. Mr. Milam signed an application, and I told him I'd see what I could do about it.

Q. Where did he sign the application?

A. It was at my home and office on Harper Road, Beckley, West Virginia.

MR. GRAVITT: I ask the Reporter to mark for identification, please, an application blank which purports to be signed by Mr. Dallas Milam, dated October 4, 1962, I ask him to mark it for identification as General Counsel's Exhibit 2-A, please

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 2-A for identification.)

By Mr. Gravitt:

Q. Now, Mr. Harris, I show you what has been marked as General Counsel's Exhibit 2-A and ask you if you can identify it?

(Document handed to witness)

A. This is the application that Dallas Milam signed.

Q. Is his signature on it?

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A. It is.

Q. Did you see him sign it?

A. I did.

MR. GRAVITT: Mr. Examiner, I ask that General Counsel's Exhibit 2-A be admitted into evidence.

TRIAL EXAMINER: Any objection?

MR. TAYLOR: May I see it first?

TRIAL EXAMINER: Yes, sir.

(Document handed to Counsel for Respondent.)

MR. TAYLOR: No objection, your Honor.

TRIAL EXAMINER: There being no objection, the document is received as General Counsel's No. 2-A.

(Whereupon, the document heretofore marked General Counsel's Exhibit No. 2-A for identification, was received in evidence.)

By Mr. Gravitt:

Q. Did you state, Mr. Harris, that Mr. Milam was at your house on the night of October 4th?

A. My home and office.

Q. Tell us the nature of the discussion that night, please.

A. Well, Mr. Milam said that he understood --

MR. TAYLOR: Your Honor, I object to Mr. Harris testifying what Mr. Milam says. He's summoned as a witness here. He can repeat that conversation at the appropriate

time.

TRIAL EXAMINER: I'll reserve decision on your objection.

Let's see where the testimony leads.

Go ahead, answer the question.

A. (Continued) Mr. Milam stated that there seemed to be an amount of problem arising out at the company plant, and it looked like there was going to be some people laid off possibly, and he wished to make an application and join the Union, and would like for me to represent him for purposes of future employment out there.

By Mr. Gravitt:

Q. Was Mr. Milam working at this time?

A. I understand he was, yes.

Q. Now, did you still have pickets at the Respondent's operation?

A. We did, sir.

Q. At this time.

A. We did, sir.

Q. Now, did you ever have any further contact with other replacements working at the plant?

A. The following day, which was --

Q. Are you talking about the day after October 4?

A. Right.

Q. All right.

A. -- the following day, which would have been October 5th.

I was at the picket line, which was established in front of the Employer's place of business on Stanford Road. It was approximately 5:00 o'clock in the afternoon when Mr. Jackson Brown contacted me at the picket line.

He stated that he wanted to know if I would represent him and the additional employees that were working there at the time.

I said, I would, "Get the rest of the fellows together and I'll talk with them."

Q. Did any of them ever appear out in front of the Respondent's plant?

A. At between 5:00 and 5:30 p.m., the additional employees that were working inside --

Q. Let me ask you this, if I may:

Did Mr. Brown return to the picket line?

A. He did.

MR. TAYLOR: Your Honor --

By Mr. Gravitt:

Q. Did you see --

MR. TAYLOR: Your Honor, we're getting to a pretty crucial point here. There's been considerable leading of this witness, and I would respectfully request that from now on the questions be framed in such a way as not to suggest an

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answer.

I object to the questions that have been asked heretofore as leading.

TRIAL EXAMINER: Since they've been answered, why, I think your objection comes late.

Let's have the last question, please.

(Question read.)

TRIAL EXAMINER: Objection overruled.

By Mr. Gravitt:

Q. Did --

TRIAL EXAMINER: Wait. Before you go any further.

Did I understand, Mr. Zazzali, that you say

Robert Jackson is a business agent of the Union?

MR. ZAZZALI: That's correct.

TRIAL EXAMINER: Oh. I see, Okay.

Now, we're talking here at this point about Jackson Brown. That's an employee. Is that right?

THE WITNESS: Yes, he was an employee of the Pepsi-Cola Bottling Company.

TRIAL EXAMINER: He was an employee in the plant at the time you had the picket line.

THE WITNESS: Driving a truck, sir.

TRIAL EXAMINER: Truck driver.

THE WITNESS: He was a route salesman.

TRIAL EXAMINER: All right.

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Now, go ahead.

By Mr. Gravitt:

Q. Did you talk to Bill Lukach on this occasion, Mr. Harris?

A. I did.

MR. TAYLOR: Your Honor, I do object to that question and the rest that are going to come as a leading question.

MR. GRAVITT: Your Honor --

TRIAL EXAMINER: Overruled.

Go ahead.

MR. TAYLOR: All right.

By Mr. Gravitt:

Q. You may answer, sir.

TRIAL EXAMINER: Where did you talk to him?

THE WITNESS: At the picket line.

By Mr. Gravitt:

Q. Did you talk to Ronald Keffer?

A. I did.

Q. Did you talk with Kenneth Keffer?

A. I did.

Q. Did you talk with John Davis?

A. I did.

Q. Now, tell the Trial Examiner, please, what you talked about, if anything.

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A. Well, those employees, the gentlemen that you mentioned, came to the picket line, and as a group asked me if I would sign them up, and they wished to make application to become members of the union.

I said I would be very glad to.

So each --

Q. Did you have any applications with you?

A. I did.

Q. Did you show them to the employees?

A. I did.

Q. Did any of the employees sign the authorization cards?

A. The employees that you mentioned, yes, they did.

MR. GRAVITT: Mr. Reporter, would you mark for identification, please, as General Counsel's Exhibit an application blank of John Davis as 2-B;

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 2-B for identification.)

MR. GRAVITT: An application of Jackson D. Brown as 2-C;

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 2-C for identification.)

MR. GRAVITT: An application of Bill Lukach as 2-D;

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 2-D for identification.)

MR. GRAVITT: An application of Ronald Keffer as 2-E;

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 2-E for identification.)

MR. GRAVITT: And an application of Kenneth Keffer as 2-F.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 2-F for identification.)

By Mr. Gravitt:

Q. Now, Mr. Harris, I show you what has been marked for identification as General Counsel's Exhibit 2-B --

TRIAL EXAMINER: Show them all to him at once.

(Documents handed to witness.)

TRIAL EXAMINER: Look them over.

Are they the cards that these men signed?

THE WITNESS: Right.

TRIAL EXAMINER: Where did they sign them?

THE WITNESS: Right at the place for the signature.

By Mr. Gravitt:

Q. He means the location.

TRIAL EXAMINER: What location?

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THE WITNESS: At the picket line.

TRIAL EXAMINER: At the picket line.

THE WITNESS: Right.

TRIAL EXAMINER: Were they all there together?

THE WITNESS: They were there as a group, sir.

TRIAL EXAMINER: Did you see each one sign?

THE WITNESS: I did, sir.

TRIAL EXAMINER: All right.

Go ahead.

By Mr. Gravitt:

Q. And what was the date, sir?

A. 10-5-62, October 5th, '62.

Q. Thank you.

MR. GRAVITT: Would the Respondent's Counsel care to look at these?

MR. TAYLOR: Yes.

(Documents handed to Counsel for Respondent.)

MR. GRAVITT: Mr. Examiner, I move that General Counsel's Exhibits 2-B through 2-F, all the authorization cards, be received into evidence.

TRIAL EXAMINER: Any objection?

MR. TAYLOR: No objection.

TRIAL EXAMINER: There being no objection, those documents are received in evidence with the markings given for identification.

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(Whereupon the documents heretofore marked General Counsel's Exhibits No. 2-B through 2-F, inclusive, for identification, were received in evidence.)

* * * * *

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* * * * *

Q. Do you know the duties of these employees, Mr. Harris?

A. Yes.

Q. What were they?

A. They were route salesmen and plant employees. What classification the Employer put them in, I don't know, sir. That was their duties.

* * * * *

Q. Well, will you tell us, if you can recall, sir, just briefly what was said during this conversation?

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A. The employees came out as a group, the ones I mentioned, and asked me if I would represent them.

I said, "Now, is this all of you? Are you all wishing the same thing?"

And they all answered affirmatively that they were.

* * * * *

Q. Now, you asked were they still working. What were you referring to?

A. Well, there was a trailerload of drinks that just came in the plant, and I presumed that some of them would have to unload that trailer.

Q. Were you talking about for that particular day?

A. That's right.

* * * * *

Q. Do you know a Mr. Kyle C. Smith?

A. I do.

Q. Does he work for the Respondent?

A. He does.

Q. Was he working on that occasion for him?

A. He was.

Q. Do you know in what capacity?

A. He was in a supervision capacity is what I would classify him as.

Q. Now, on this particular occasion did you see Mr. Smith?

A. He came out -- he came out of the plant.

Q. Did you have any discussion with him?

A. I did. I says --

Q. Tell us about it.

A. He came out of the plant --

I beg your pardon?

Q. Tell us about it, please.

A. -- and he said, "Harris, what's going on?"

I said, "Mr. Smith, I am officially notifying you

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that I represent your employees at this location, and I wish to negotiate a working agreement with you for their future employment." I said, "I am officially notifying you about it."

And he said, "Well, I don't know anything about it." He said, "I'll have to call the boss."

So he immediately goes back into the plant.

Q. Did you go into the plant?

A. I did.

Q. Where were the employees now?

A. The employees went back into the warehouse area, and I also went with them.

Q. Well, now, just tell us what happened on this occasion, if anything.

A. Well, Mr. Smith proceeds on to the office, and I assumed that he went in there to call his boss. He came back out in a little bit. He said, "The boss said . . ." or "Mr. Hunnicutt said . . .", I don't recall which, ". . . said to send you boys home, and for me to unload the trailer." That was for him to unload the trailer.

And I said, "Well, you've still got a man on the clock."

And he said, "Well, I'll ring him out."

He went over to the card rack, got his card, dropped it in -- got a card, dropped it in the rack -- dropped it in the clock, and rang it out.

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Q. Do you know whose card it was?

A. Ronald Keffer.

I didn't see the card. I seen him -- He said, "Well, I'll ring him out," and he went over and got a card out of the rack, put it in the time clock, and rang it.

Q. As far as you know, is that the general practice of ringing out time cards at the plant?

A. You mean for supervision to do it?

Q. Yes.

A. I don't know.

Q. Well, now, do you know whether Mr. Smith was in charge of this operation or not at Beckley?

A. Yes; I understand he was. He's the employee of the Company that I talked to. He's the one that I understand directs the work force, and they looked to him, the employees, as a supervisor.

Q. Now, did Mr. Smith say anything to you that you can recall about any conversation over the phone concerning recognition?

MR. TAYLOR: Your Honor, again --

MR. GRAVITT: I withdraw the Question.

By Mr. Gravitt:

Q. About how long were you in the warehouse on this occasion?

A. Maybe again twenty minutes, more or less.

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Q. Now, do you recall any further remarks between you and Mr. Smith?

A. Well --

MR. TAYLOR: Object to any further remarks between Mr. Harris and Mr. Smith.

TRIAL EXAMINER: Overruled.

By Mr. Gravitt:

Q. Go ahead.

A. Mr. Smith, when I told him that he still had an employee on the clock, he rang him, he said, "Well, I'll ring him out."

After he rang the employee out, I said, "Pete, do you want these employees to return to work tomorrow as usual?"

He said, "Yes, the ones that are scheduled to come out tomorrow, come on out."

I said, "All right. They will be here."

The employees then left the warehouse area, and I assume went home.

I stayed for a short period. I had a question of Mr. Smith. I said, "Pete, do you want to take the applications that I have and go to a clergyman, or some responsible citizen in the community that we might agree onto check the validity of the applications that I have?"

Q. What did he say, if anything?

A. He says, "You tell me you've got them; that's good

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enough for me."

Q. Do you recall, sir, the name of any pickets, or picket, that was present on this occasion of October the 5th, 1962?

A. That day there were three pickets assigned to the picket line.

Q. Did you see them there?

A. Yes.

Q. Did you see them there on this late afternoon event that you testified about?

A. That's right. There was Albert Murdock, Hobart Murdock and Richard Heath - or Dick Heath.

Q. Do you recall whether or not Jackson Brown mentioned returning to work or not?

MR. TAYLOR: Object to that, your Honor.

TRIAL EXAMINER: Sustained.

By Mr. Gravitt:

Q. When Mr. Smith stated, or told the employees to return to work, was Mr. Brown present?

A. He was.

Q. Did Mr. Brown make any remark at this time?

A. He said, "Pete, do you want me to come out to work tomorrow?"

Pete said, "Yes."

TRIAL EXAMINER: Who was Pete?

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THE WITNESS: Smith. Mr. Smith. Kyle Smith.

MR. GRAVITT: This is the same Mr. Smith who is referred to in 4(b) of the Complaint.

By Mr. Gravitt:

Q. Now, did you ever talk to Mr. Smith again?

A. Yes. The following morning, which would have been Saturday.

Q. Where did you talk with him?

A. At the Company plant on Stanaford Road, in the plant office.

Q. Was there any discussion about the Union?

A. Yes.

Q. Will you tell us, please, what you said on this occasion, and what you recall Mr. Smith saying on this occasion, if anything?

A. Well, first I asked him what his boss was going to do.

Q. Who are you referring to?

A. Mr. Hunnicutt.

Q. Oh. All right. Proceed.

A. He said, "Yes," he said, "Mr. Hunnicutt wants the applications that you're supposed to have, he wants them checked."

I said, "All right. Who do you want to have check them?"

We agreed on Justice of the Peace, Joe Rodriguez.

Q. Where is he located?

A. Just across the street here, sir. It's on Prince Street.

Q. Well, was there anything done about this point that was raised?

A. Mr. Smith and I proceeded to Rodriguez' office. Prior to going there, before we left the plant I

suggested to Mr. Smith that he get the social security number and signature of the employees, which I had the applications for, so that they could be checked at the Justice's office when we arrived there.

Q. What did Mr. Smith say, if anything?

A. He got the signatures and social security numbers with the exception of Bill Lukach.

Q. Were you present there? Were you there in the office with him?

A. That's right.

Q. Now, do you recall Mr. Smith making any telephone calls while you were there in his presence?

A. I don't -- he could have made them. I don't recall.

Q. Now, I want to direct your attention to this remark you made to him about getting documents to check signatures. At that particular time do you recall whether he called his boss or not?

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MR. TAYLOR: Your Honor, the question has been asked and answered. The witness has said he has no recollection of a telephone call.

TRIAL EXAMINER: Overruled.

A. No, sir, I don't recall. He could have called his boss.

By Mr. Gravitt:

Q. Did you see --

A. I don't know. I wasn't in there. I left the office just a few minutes ahead of Mr. Smith before we proceeded to the Justice's office. I don't recall whether he called his boss during that period or not.

Q. Well, did you ever arrive at the Justice's office?

A. We did.

Q. Did Mr. Smith have this information at that time with him?

A. He did.

Q. Well, tell us what happened on this occasion.

A. Well, we arrived at the Justice's office, and explained to him our mission, what we --

Q. What did you tell him; just tell us?

A. We told him - I said, "Joe, I have applications here for Mr. Hunnicutt's employees employed out here on Stanaford Road at the Pepsi-Cola Bottling plant, and I would like for you to check them against information that Mr. Smith

has to see if they are valid."

He says, "all right. Just a moment." He had some additional work to do in his office.

In a moment he got to us.

Q. What did he do then?

A. I handed him the applications, and Mr. Smith gave him the information that he had, and he checked - he sat there at his desk and checked one against the other, and stated that they were valid. And he told Mr. Smith, he says, "You can have Mr. Hunnicutt call me to verify this, or as a witness".

Q. Now, you mentioned earlier --

A. Now, wait a minute --

Q. You mentioned earlier about another employee in regard to the --

A. That's right.

Q. -- social security, signatures, or whatever. Do you recall that?

A. With the exception -- They were each checked with the exception of Mr. Bill Lukach, and there was no - there was no social security number on Mr. Lukach's, as I remember.

And Mr. Rodriguez says, "Well, I recognize Bill's signature." And he said, "From other reasons I recognize Mr. Lukach's signature."

As I recall, there was no social security number on

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Bill's, or Mr. Smith did not have it.

Q. Did Mr. Smith raise any objections at that

time ?

A. No.

Q. Did you ask Mr. Rodriguez for any statement regarding this matter ?

A. Yes, I did.

Q. Did he give you any statement ?

A. He gave me -- he typed a statement with the names on it that he had checked.

Q. Well, after Mr. Rodriguez completed this card check, what did he say, if anything ?

A. He simply stated, he said, "Yes, they're all right." And he said, "Smith, you can have Hunnicutt call me to verify this if you want to, as a witness."

Q. What did Mr. Smith say ?

A. He said, "All right."

Q. Did you make any remark ?

A. No. We immediately left the office. We could have possibly passed the time of day, about the weather, or something, but as far as our business, it was concluded.

Q. Do you know how long Mr. Rodriguez has been a Justice of the Peace ?

A. Oh, I've been there 2-1/2 years, and he's been a Justice ever since I've been there. I don't know how long he's been a Justice.

MR. GRAVITT: I ask the Reporter to mark as General Counsel's Exhibit 3 the statement from Joe Rodriguez, Justice of the Peace.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

THE WITNESS: Could I see that statement?

MR. GRAVITT: Yes.

By Mr. Gravitt:

Q. Now, Mr. Harris, I'll show you what has been marked as General Counsel's Exhibit 3 and ask you if you can identify that?

(Document handed to witness.)

A. That's right.

By Mr. Gravitt:

Q. What is it?

A. This is a statement from Mr. Joe Rodriguez.

"This is to certify that I have checked the signature and the Social Security of the following and found them to be true and exact---these names checked were on applications for The Teamsters Union.*** Respectively yours, Joe Rodriguez."

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MR. TAYLOR: If the Court please, it might expedite matters simply by agreeing to the admission of this in evidence at this time of its offer, and by stipulating Squire Rodriguez is a Squire, he is an officer with the authority, or competent to check signatures, and that the signatures on the social security cards and on the Union authorization cards do coincide.

And then we can go on from there. I think all this evidence is hearsay up to now. It won't work unless the Squire is here.

But if I can accommodate you, I'll make that stipulation.

MR. GRAVITT: I appreciate Counsel's statement and spirit of cooperation and the stipulation. And I join in the stipulation.

TRIAL EXAMINER: It is so stipulated.

I assume that General Counsel's Exhibit 3 for identification is withdrawn?

MR. GRAVITT: No; I move it be received into evidence.

TRIAL EXAMINER: You wish it to be admitted into evidence.

MR. GRAVITT: Yes.

TRIAL EXAMINER: Any objection?

MR. TAYLOR: I think in view of the stipulation, I see no reason for it, but if you --

TRIAL EXAMINER: You're stipulating in effect the genuineness of the signature and the facts contained on the authorization cards, aren't you?

MR. GRAVITT: Yes, sir.

So, if we are stipulating those things, I don't see where we're hurting one thing to have it in the record, it's the same, so we would just like to have it in.

MR. TAYLOR: Put it in, your Honor.

TRIAL EXAMINER: All right.

The objection is withdrawn. The stipulation is accepted. And the document is received into evidence as General Counsel's Exhibit No. 3.

(Whereupon, the document heretofore marked General Counsel's Exhibit No. 3 for identification, was received in evidence.)

MR. GRAVITT: Now, your Honor, I have submitted the statement and the duplicate. At this time I make the motion to withdraw the original statement and substitute a copy in

lieu thereof.

TRIAL EXAMINER: All right. Granted.

By Mr. Gravitt:

Q. Well, will you tell us what happened, if anything, after you secured this statement, General Counsel's Exhibit No. 3? Did you ever leave the office?

A. Yes.

Q. Where did you go?

A. Back to the plant, back to the Company's place of business.

Q. Did you have any further discussion at that time with Mr. Smith?

A. I said, "Well, Pete," I said, "I will make myself available to Mr. Hunnicutt for the entire weekend. I'll be at home, if he should like to discuss this situation with me. I called him the last time," I said, "I think it's his place to make some indication of what he wants to do with this; that the employees are pretty impatient, they would like to get something settled, and," I said, "I will be available at my telephone the entire weekend."

Q. Well, now, when you returned to the warehouse from this Rodriguez card check, did you see any of the employees there?

A. Yes.

Q. Who did you see, if you can recall?

A. Let's see -- On the way to the Justice's office I taken John Davis home. I dropped him off at his home, as Mr. Smith and I was on the way to the office. And when I returned to the plant, there was Jackson Brown, Ronald Keffer was there, and as I recall Ronald Keffer was on the way out with the Company pickup with drinks on it, soft drinks.

Q. Is this after the card check?

A. Yes.

Q. All right.

A. Later Mr. Blevins --

Q. Who is Mr. Blevins?

A. He is again I would say in a supervision capacity, or was at that time. I would classify him as in the supervision capacity.

He returned to the Company's plant with a route truck, and through the conversation I gathered that he had been uptown delivering drinks.

The discussion with Mr. Smith ended at that point, and I returned out to my picket line.

Q. All right.

A. I had pickets established at the plant there at that time.

Q. Do you recall any further discussion with Smith?

A. On Sunday, the following day.

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Q. Now, where did this discussion take place?

A. This was over the telephone.

Q. All right.

A. That I talked with Mr. Smith.

Q. Where? Where were you?

A. I was at home in my office.

Q. Do you know where Mr. Smith was?

A. I assume he was home. I don't think that I asked him.

Q. Did you call him?

A. No; I think Smith called me on this occasion. And he said --

Q. How do you know it was Smith, if it was?

A. I recognized Smith's voice. I've talked to him enough times.

Q. Now, tell us the nature of the conversation.

A. Smith said that Mr. Hunnicutt didn't want to discuss it, and in essence he didn't have anything to discuss with me, and that I could start anything I wanted to start.

Those were his words.

I --

Q. Did you have any further discussion with Mr. Smith concerning the Union?

A. At that day?

Q. No. The next day.

A. On Monday?

Q. Yes. Did you talk to him on Monday, do you recall, Mr. Harris?

A. Yeah; the following day.

Q. And where did you talk to him then?

A. Well, this was at the Company's plant.

Q. Do you know where in that locality?

A. In the driveway, at the driveway of the Company's plant; it goes up into the building.

Q. Was anyone else present at that time?

A. My pickets were there, and I believe Jackson Brown, to the best of my knowledge - Jackson Brown, Ronald Keffer, and Pete Smith.

I don't recall whether they were present when Mr. Smith and I were discussing and talking or not.

Q. Well, tell us what you recall about such conversation.

A. Mr. Smith said that he had orders from his boss to send out Jackson Brown, Ronald Keffer, Pete Smith -- or I beg your pardon -- Russell Blevins, and he, himself, was to take out a truck; and that they were to close the plant, that is close the doors. There would be nobody there.

I said, "All right."

And that's what they did.

TRIAL EXAMINER: When you say, that's what they did,

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what does that mean?

THE WITNESS: These four people drove.

TRIAL EXAMINER: Drove what?

THE WITNESS: Drove trucks, Company trucks, that day.

TRIAL EXAMINER: Loaded trucks?

THE WITNESS: They delivered on the routes. They left the premises with the --

TRIAL EXAMINER: Loaded trucks.

THE WITNESS: Right.

There was nobody left at the plant. They closed

the doors on it that day.

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Q. Now, on this particular day, how many people were working there at the plant?

A. To the best of my knowledge, there were four.

* * * * *

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Q. Did you have any discussion with Mr. Jackson?

A. Mr. Jackson was in direct contact with this situation.

Q. How was he in contact with it?

A. Well --

MR. TAYLOR: Your Honor, I object to his answering this question because Mr. Jackson will be able to give the most competent testimony of his activities in this area, and Mr. Jackson is here.

TRIAL EXAMINER: I'll overrule the objection.

I'll take the evidence subject to connection.

MR. TAYLOR: Thank you, your Honor.

A. (Continued) Mr. Jackson was in direct contact with this problem at the Company's plant out there who at a number of times visited the picket line, and was in direct

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contact with them; also had talked to some of the replacements, economic strikers replacements.

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Q. How far is Princeton from Beckley?

A. Approximately forty miles.

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Q. Do you know if -- to your knowledge is Kyle Smith working for Mr. Hunnicutt at this time?

A. To the best of my knowledge, he is. He's driving a Pepsi-Cola Bottling Company truck in Princeton, drinks, with Pepsi-Cola on them, and delivering it in this area.

Q. Do you know Mr. Russell Blevins?

A. I do.

Q. Does he work for Mr. Hunnicutt?

A. I understand that he does.

Q. In what capacity?

A. In the same capacity; he is a route salesman.

Q. Is he working in the Beckley area, to your knowledge?

A. He does.

Q. What does he do?

A. He is a route salesman. I would classify him as a route salesman. That's the type of work he does.

Q. Do you know what area he's serving?

A. The City of Beckley, I believe.

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Q. No. I think you probably misunderstand the question. Maybe I didn't state it clearly.

Prior to the -- Has the operation here in Beckley been shut down?

A. It is shut down, yes.

Q. Yes.

A. Yes.

Q. Now, before that, did Smith and Blevins work out of the operation here in Beckley?

A. Yes; Yes. Prior to the closing of the operation.

Q. Yes.

A. Yes, they worked out there, uh huh.

Q. And they're working out of where, now?

A. Princeton.

Q. And are they -- to your knowledge are they serving the same area that was formerly served by the Beckley operation?

A. Yes.

Q. To your knowledge, are there any other individuals working in this area now?

A. You mean driving Pepsi-Cola trucks?

Q. Yes, sir.

A. Yes, there are; there are other trucks other than Mr. Smith and Mr. Blevins.

Q. What are --

A. Other people driving Pepsi-Cola trucks in this area other than those two people, yes.

Q. Can you name them?

A. No.

Q. How do you know this?

A. I see them.

Q. When?

A. I pass them on the road.

Q. The Pepsi-Cola soft drinks that are being served, the customers in this area, do you know from what source they're coming, what plant?

A. Princeton, West Virginia, I'm told.

* * * * *

TRIAL EXAMINER: All right, Mr. Tanner, on the record.

I've gone over the Regional Office file given to me by the General Counsel in Case No. 9-CA-2631 for the purpose of determining what matters were brought before the Board at that time for investigation regarding the events of May, 1962.

The charge filed there alleges a lockout of

employees because they had engaged in certain concerted activities. And the charge alleges that that lockout was there for a violation of Sections 8(a)(1), (3) and (5) of the Act.

After investigation it appears that the Board at the Regional Office level refused to issue a complaint,

and on appeal the General Counsel, the Board in Washington sustained that appeal -- sustained that position -- denying the appeal.

In view of that I don't see why the Board should be required to go into the same set of facts again after the Board reviewed them --

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By Mr. Zazzali:

Q. Can you state approximately what time the Respondent resumed operations at Beckley, West Virginia?

A. It was approximately two weeks after the close of the operation. Now, that -- take a day or two on that. I wouldn't be positive.

* * * * *

Q. During that period, was the Beckley plant -- the Beckley area, including this City of Beckley, serviced by any Pepsi-Cola trucks?

A. It was.

Q. Approximately how often were trucks coming into this area?

A. You said approximately?

Q. Right.

A. Everyday

Q. Do you know from where they were coming?

A. I beg your pardon - with the exception of Sunday.

Q. Do you know from where these trucks originated?

A. Again I would have to say to the best of my knowledge, Princeton.

Q. Did any of the employees or supervisors of the Beckley plant indicate to you their point or origin?

A. Yes, they did. Princeton, West Virginia.

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Cross-Examination

By Mr. Taylor:

* * * * *

Q. It was May 16th.

A. It was Wednesday evening -- What was Wednesday? I don't have a '62 calendar in front of me. This is '63.

Q. Let me ask you this, sir --

A. It's been a long time back.

MR. GRAVITT: I'd like to say, then, that it is -- the calendar does show May 16th on a Wednesday, since we had this earlier comment about it.

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Q. All right, sir. Then, when did you talk to these other gentlemen - Cook, and Arden, McDowell, and the Murdocks and Heath?

A. The same evening.

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Q. Now, you got these gentlemen to apply for membership in your Union, didn't you?

A. I didn't get them to, sir. They asked to.

Q. They asked to.

A. That's right.

Q. And they did apply.

A. They did.

Q. And what date did that occur?

A. At the same meeting I talked to them; the first contact with the employees.

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A. My first contact was on the 4th; the second contact with those employees was on the 5th.

Q. All right, sir. You contacted Dallas Milam on the 4th. Isn't that right?

A. I didn't contact him; he contacted me.

Q. You and Mr. Milam got together on the 4th.

A. I suppose you could say that.

Q. Well, Mr. Milam sought you out on the 4th, and you all had a discussion about the Union, joining the Union, on the 4th.

A. Right.

Q. And this was what time - 5:30 or 6:00 o'clock in the evening.

A. After dark.

Q. After dark.

A. He arrived at my home, it was after dark. What time it was, I don't recall.

Q. And he signed an application with you that day, didn't he?

A. He did.

Q. And he told you at that time he wasn't working for Pepsi-Cola any more, too, didn't he?

A. I don't recall whether he said any more or not, or whether he even said he wasn't working for Pepsi-Cola.

Q. You don't have any recollection about that.

A. He said there was some problem out there. He hasn't had it straightened out yet.

Q. Did he have his pay check with him, or do you know?

A. I didn't ask him for his pay check. I don't know whether he had it or not.

Q. Did he go back to work there after the 4th?

A. To my knowledge, he didn't.

Q. And hasn't been back to work there since, has he?

A. To my knowledge, he hasn't.

Q. He told you at that time, did he, that it looked like there was a layoff in the making, or going to come up; isn't that right?

A. I believe he did say that, yes.

Q. And, of course, that would be based on what he learned before he came to you, to see you that day, wouldn't it?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Sustained.

By Mr. Taylor:

Q. He told you that, didn't he?

A. Again, this conference has been a good while, and the additional conversation, I don't recall what it was, Counsellor, all of it. He told me he was interested in becoming a member of the Union, and that's what he did.

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Q. And he also told you that it looked like there was going to be trouble, or a dispute, or a layoff out there, didn't he?

A. He discussed it, yes.

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Q. Now, on General Counsel's Exhibits 2-B through 2-F, there is a time about where each person signed his name on those applications. Isn't that correct?

A. There is.

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Q. Would you tell the Trial Examiner what that time is, sir?

A. These are marked 6:30.

* * * * *

Q. All right, sir. Would you tell us who was what?

A. Well, I think that all employees out there did different types of work, now, with the exception of, I believe Ronald and Kenneth Keffer. The rest of the employees did basically truck selling, or selling the merchandise. I believe the two Keffer boys devoted most of their time to warehouse, possibly loading and unloading trucks, running extra orders, and that sort.

Q. Keffer is in the warehouse primarily, and the rest of them were route salesmen. Is that right?

A. I believe that's the way it was yes.

Q. Did you talk to a person by the name of Wardenski?

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out there that day?

A. The name is familiar, sir, but I don't recall. I believe he was employed out there.

Q. In any event, he didn't join your Union. Is that right? You didn't talk to him about that.

A. I don't have an application on him, no.

Q. I think you testified this morning that Ronald Keffer was still on the clock out there when you were there on the 5th of October. Is that correct?

A. That's right. Ronald Keffer said at the time the applications were said, Ronald said, "Yes, I'm

still on the clock; I have to unload the trailer that just came in."

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Redirect-Examination

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TRIAL EXAMINER: Well, there is one difficulty with your question. There's a labor dispute, and I don't know yet whether it's a continuing labor dispute, or several labor disputes.

MR. TAYLOR: Yes, sir.

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By Mr. Gravitt:

Q. I asked you what was the labor dispute with the Respondent?

A. Well, to my knowledge, it was a request on the original, and when I speak of the original I mean a group of employees that were there prior to May 15th, making a request of their employer for additional compensation and health, and the employer refused them, and then it evolved into a series of disputes and arguments.

* * * * *

Q. Tell us when that discussion was, what happened.

A. When I called Mr. Hunnicutt on - in May - May 17th, I believe, I first talked to him by telephone, I expressed my desire to get his problem out there settled, and offered to come to Princeton to his office and discuss it with him and see if we couldn't get his equipment back on the road running and selling his merchandise.

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And Mr. Hunnicutt told me that he had no employees in Beckley, and that I could go straight to hell.

So --

Q. Did you ever resolve that dispute out there?

MR. TAYLOR: Your Honor, the record speaks for itself.

A. It --

TRIAL EXAMINER: Overruled.

Answer the question.

A. (Continued) You mean did I --

By Mr. Gravitt:

Q. Is it a settled matter, the labor dispute that we've been talking about?

A. No, sir.

Q. It's still continuing, is it?

A. It's still continuing, yes.

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TRIAL EXAMINER: All right. You said you called them route salesmen; you weren't sure whether they were all route salesmen, but you knew that the two Keffers worked mostly in the warehouse. Is that right?

THE WITNESS: Yes, sir, that's right, sir.

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Recross-Examination
By Mr. Taylor:

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Q. And they were hired as replacements for this first group that you represented, weren't they?

MR. GRAVITT: I object. This is repetitious and repetitious.

TRIAL EXAMINER: Overruled.

A. I suppose they were hired, sir.

TRIAL EXAMINER: Well, do you know?

A. (Continued) They were hired.

TRIAL EXAMINER: Were they hired?

A. (Continued) I assume they were hired to replace these employees, yes, sir.

By Mr. Taylor:

Q. As a matter of fact --

TRIAL EXAMINER: You know that they came into the

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plant to work after these other people that you represented went out --

THE WITNESS: Yes, sir.

TRIAL EXAMINER: -- on the picket line.

THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right.

Go ahead.

By Mr. Taylor:

Q. As a matter of fact, they voted in the election on the 31st of August, didn't they?

MR. GRAVITT: I object to who votes in the election.

MR. TAYLOR: All right. I withdraw the question.

By Mr. Taylor:

Q. But these gentlemen whom you now represent

were in no way connected with this labor dispute with the persons whom you first represented, were they?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. What do you mean, labor, sir?

By Mr. Taylor:

Q. They're not related in that you hadn't represented them until later on in October.

A. That's right; that's right, yes, sir.

Q. And you didn't look after their interests back in May or June or July.

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A. No, sir. They didn't request it, sir.

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ROBERT D. JACKSON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated.

Tell the Reporter your full name and present home

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address.

THE WITNESS: Robert D. Jackson, 731 Oakwood Road, Charleston, West Virginia.

Direct Examination

By Mr. Gravitt:

Q. Are you associated with the Union in this hearing?

A. Yes, I am.

Q. In what capacity?

A. I'm a Business Agent.

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Q. Now, can you tell us what day you started to Princeton, I'd assume from Charleston?

A. I believe it was Tuesday, October the 9th, sir.

Q. How did you go?

A. By automobile.

Q. Did anyone else go with you?

A. Kermit Harris.

Q. Where did he join you?

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A. I drove to his home, and we drove - and he drove his automobile the balance of the distance.

Q. The distance to where?

A. Princeton, West Virginia.

Q. And what happened when you arrived at Princeton, West Virginia?

A. We went to the Pepsi-Cola Bottling plant seeking Mr. Hunnicutt.

Q. Do you recall the date?

A. This was, as I recall, the best I recall it was Tuesday, October the 9th.

* * * * *

Q. Did you talk to anyone there about his whereabouts?

A. We found -- we talked to some employees who were in the yard servicing trucks, unloading cases, procedure, and they informed us that Mr. Hunnicutt had left for the day and had gone to his home, and we may reach him.

Q. Did you take any further steps to contact

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Mr. Hunnicutt?

A. On the outskirts of Princeton on the way back toward the turnpike we stopped at a Gulf station and I called Mr. Hunnicutt by phone.

TRIAL EXAMINER: About what time of day was that?

THE WITNESS: This must have been approximately

5:45 or 6:00, probably closer to 6:00 than 5:45.

TRIAL EXAMINER: Go ahead.

By Mr. Gravitt:

Q. Was it a local call, or long distance?

A. Yes, it was a local call.

Q. Did you dial the number:

A. Yes, sir.

Q. Where did you get his number?

A. From the telephone directory, I believe. Pardon me, I'm not sure, but --

MR. GRAVITT: Would Counsel stipulate that Mr. Hunnicutt talked to Mr. Jackson on this occasion?

MR. TAYLOR: Yes, sir.

By Mr. Gravitt:

Q. Well, just tell us briefly what you said to Mr. Hunnicutt, and what he said to you.

A. I requested a meeting with Mr. Hunnicutt, and Mr. Hunnicutt said that he would be -- that he would meet with me. And I suggested the following morning.

As I recall, and, please, bear in mind this has been quite sometime ago, and I am trying to recall a conversation that took place on the telephone. As I

recall there was no final decision as to whether or not there would be a meeting until the tailend of the conversation. The conversation by phone must have lasted somewhere in the neighborhood of, in excess of twenty minutes, and probably less - I would say less than forty-five.

Q. Well, tell us - just tell us what you said and what he said to you so the Trial Examiner may hear it.

A. Well, upon my request he asked what we wanted to talk about. And I stated that it was my understanding that the employees in Beckley had joined the Union, and that by his request they had verified the applications, and I wanted to have a stipulation as to recognition of the Union as the bargaining agent.

And he proceeded to light into a tirade --

Q. Now, don't describe it, sir. Just tell us what he said, if you recall.

A. I'm not sure I know what you mean by what he said.

Q. What he told you on the telephone, Mr. Jackson.

TRIAL EXAMINER: The words he used.

A. Well, as best I recall, it took him a while and a great deal of profanity, but he said, "No, I've got no -- "that he would not deal - he wasn't intending to deal with any

Teamster - any union, and especially not the Team-

sters. And he proceeded to threaten me with Federal suits, and I don't recall what all.

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Cross-Examination

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Redirect Examination

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By Mr. Gravitt:

Q. Did he tell you that he would recognize the Teamsters under any condition?

A. Under absolutely no conditions.

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Q. Did he tell you why he wouldn't recognize the Teamsters?

MR. TAYLOR: Your Honor, that is irrelevant.

MR. GRAVITT: Oh, it isn't I beg your Honor.

TRIAL EXAMINER: Overruled.

Answer the Question.

By Mr. Gravitt:

Q. You may answer.

MR. TAYLOR: Now, it's beyond the scope of his examination, also, sir.

TRIAL EXAMINER: I've overruled the objection.

Go ahead, answer the question.

A. Yes. He stated that by virtue of the informational picket line, and the unfair labor practice picket line that had been put up at his establishment in Beckley, that we had ruined him, and that --

That's about the --

Q. Now, this is October '62 you're talking about.

A. That's right.

* * * * *

Q. I've asked you if you've had a contract with Mr. Hunnicutt involving the Parkersburg Pepsi-Cola plant?

A. Yes, we have.

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Then on Monday morning immediately following a staff meeting that we had every morning - every

Monday

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morning of all the agents and the officers who are on the payroll of the Local Union, Mr. Hunnicutt called and Mr. Rebhan--again I was present when Mr. Rebhan was talking on the phone - and after the conversation was over, he informed me that Mr. Hunnicutt had told me that he would not be able to be present for the meeting that he had scheduled, but what he wanted to talk about was Coca-Cola in Parkersburg, that the competition would beat him to death, and it was to that effect.

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H. P. HUNNICUTT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified under Rule 43(b) as follows:

TRIAL EXAMINER: Tell the Reporter your full name and present home address.

THE WITNESS: H. P. Hunnicutt, Athens Star Route, Princeton, West Virginia.

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Direct Examination

By Mr. Gravitt:

Q. Mr. Hunnicutt, are you associated with the

Pepsi-Cola Bottling Company of Beckley, Inc.?

A. Yes, sir.

Q. In what capacity, sir?

A. Well, as executive vice-president.

Q. And what do you do in that capacity, sir?

A. I'm the majority stockholder. Well, just about anything that is called on you to do; anything that needs to

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be done.

Q. Do you direct the operations?

A. Not entirely. We have a Board of Directors for that purpose.

Q. And who is on the Board of Directors, sir?

A. I'm on the Board. If I recall right there's several corporations around -- my wife, Mr. Sarver, Mr. McCoy.

Q. Would you give us his first name, please, Mr. Hunnicutt?

A. James Sarver. I could be wrong on that --

Wait just a minute.

I believe Mr. Taylor is on that, also. Mr. Taylor and not Mr. Sarver. Myself, Mrs. Hunnicutt,

Mr. McCoy and Mr. Taylor--John S. Taylor, H. T. McCoy, H. P. Hunnicutt, and Anne S. Hunnicutt.

Q. How often does the Board meet?

A. We have annual meetings, and as the occasion requires a meeting.

Q. Annual meetings?

A. Yes, sir.

Q. And who conducts these meetings?

A. Well, when my wife is able, she conducts them, and if she's not, if I'm out of town, why, Mr. McCoy will conduct them, or if they've got a forum sometimes, just different ones

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Q. Do you remember telling Mr. Reid Davis that you would deal with him?

A. Yes, sir.

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Q. Yes, sir.

A. I'd talk to the man. If he could do anything, all right.

About the next step, Kermit Harris called me - I think this happened on Tuesday.

Q. Of what month was that - May?

A. May.

Q. All right.

A. Mr. Harris called me on Thursday. He told me he represented the employees over there, and wanted to come over and sit down and bargain for those employees.

And I asked him --

Q. The employees at Beckley?

A. That's what he said.

And I asked him what employees.

Q. You asked him what employees?

A. Yes.

Q. What did he say, now, sir?

A. He said the employees, and named they by name --

Q. He named them.

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A. -- that walked off over there on Tuesday, May the 15th.

Q. Did he say that those employees wanted him to represent them? Is that right?

A. He didn't say old; he named the names.

Q. No; those.

A. The men that he represented, to me on the telephone. These employees that had walked off the job.

Q. Yes, sir. Proceed.

A. I told him they're not my employees; I intended - had no intention of sitting down and bargaining with him; that we had already begun to replace the employees who had walked off over there with new employees.

Q. How long did it take you to replace them?

A. Well, I don't know - I'd have to look at the records to do that. I can bring that record in the morning if you want to see it.

Q. Two weeks or so?

A. Oh, no. No, it didn't take two weeks.

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Q. Now, Mr. Hunnicutt, now, don't you know as a matter of fact that those trucks originated out of the Beckley Pepsi-Cola plant?

A. Out of what?

Q. Out of the Beckley -- Out of the Princeton?

A. I don't know that they did, no. I'm interested in several things; I keep pretty busy.

Q. Yes, sir.

A. I stay pretty busy.

Q. You're a --

A. I don't dig for details.

* * * * *

A. First I just want to know if you had a Pepsi-Cola truck leaving Princeton and coming to Beckley.

A. I'd have to check the records to tell you that. I would have to check.

Q. You don't have any idea?

A. I imagine they did. I just wouldn't make a positive statement that they did, but I imagine that they did.

Q. Yes.

A. I think the Beckley trucks went in and got merchandise is what I think, but I'd have to verify it.

* * * * *

Q. Is there a corporation in Princeton?

A. Yes, sir.

Q. That distributes Pepsi-Cola products?

A. There's a corporation there, yes.

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Q. What's the name of it?

A. Pepsi-Cola Bottling Company of Princeton, Incorporated.

A. Are you an officer in that corporation?

A. I am.

Q. Who else serves in the capacity as officer?

A. Mr. J. H. Sarver is president; I'm vice-president; Mr. McCoy, H. T. McCoy is secretary and treasurer.

Q. Is that the same McCoy that you mentioned?

A. The same one.

Q. Is that McCoy or Coy?

A. Wait -

THE WITNESS: Geraldine C. Taylor is secretary and treasurer of Beckley, isn't she?

By Mr. Gravitt:

Q. Who is Geraldine C. Taylor?

A. She is secretary and treasurer of Beckley.

Q. No

Is it Beckley or Princeton?

A. Beckley

Q. Well, tell us the officers --

A. Say, you'd better let me bring those corporation papers of officers in the morning and get them right, because I can't --

Q. Isn't it a matter of fact, Mr. Hunnicutt, that you manage all of these corporations including Parkersburg,

Beckley --

A. No.

Q. -- and Princeton?

A. No, it's not a matter of fact; it's not a matter of fact that I manage them all.

Q. Do you formulate decisions in these corporations?

A. Very few of them that I can get out of; very few of them that I can get out of that I formulate.

Q. Well, who is Mr. J. A. Sarver?

A. That's my son-in-law.

Q. And he's president of the Beckley -- or the Princeton plant?

A. Yes, sir.

Q. Mr. Hunnicutt, do you have to secure a franchise for distribution of the Pepsi-Cola products?

A. Yes, sir.

Q. Have you been instrumental in securing such franchises?

A. For where?

Q. Parkersburg, Beckley.

A. I've had them many many moons, all of them.

Q. Princeton.

A. I don't recall getting them. I've had them a long time, all of them.

TRIAL EXAMINER: When you say all, is that three of

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them, or --

THE WITNESS: Well, we have one in Parkersburg

--

TRIAL EXAMINER: Is that Parkersburg, West Virginia?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Go ahead.

THE WITNESS: Beckley, Princeton, and Alderson.

West Virginia.

* * * * *

Q. Where did you operate - where was your plant located here in Beckley before you moved to Stanaford Road?

A. Somewhere down - I call it Railroad Street. I don't know where it is. Down on the railroad tracks somewhere here in Beckley.

Q. Do you have any idea how long it was there?

A. No. Quite a length of time - eight or ten years, something like that.

Q. Were you --

A. I don't know.

Q. Were you --

A. I can check the records and tell you if you want to know.

Q. Were you satisfied with the location there, Mr. Hunnicutt?

A. No, sir, I wasn't satisfied.

Q. What was wrong?

A. We couldn't operate there.

Q. Why?

A. There wasn't room, and it wasn't designed for a bottling plant.

Q. Well, didn't you bottle there, sir?

A. We bottled, yes, sir.

Q. For several years.

A. January of 1962 - January or February we cut off there.

Q. You stopped your bottling there?

A. January '62, I think, or February, yes, sir.

Q. And why did you --

A. I'll have to check that.

Q. Why did you make that decision?

A. It was an unprofitable operation; an unprofitable operation.

* * * * *

Q. My question is, Mr. Hunnicutt, did you not say that it was too crowded there to conduct your operations?

A. I could have, yes, sir. It was.

Q. And then you moved to Stanaford Road. Is that

correct?

A. That's right.

* * * * *

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Q. Was it sometime before you started erecting the

A. I guess it was, or I wouldn't have built a building on somebody else's property, would he? I'd say I bought it a year before I started construction. I guess I started the

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building, or the construction in '61. I don't know.

Q. Yes, sir.

A. Fall of '61. That's a guess.

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TRIAL EXAMINER: All right. What are the officers of the Respondent Company?

Oh. I see.

(Document handed to witness.)

A. You said Beckley?

By Mr. Gravitt:

Q. Yes, please.

A. Anne S. Hunnicutt is president; H. P. Hunnicutt, executive vice-president; Geraldine C. Taylor, secretary and treasurer.

Q. And from this sheet of paper that you have there, Mr. Hunnicutt, I believe that three other corporations are named.

Would you name the corporations and the officers in them, please?

A. The Princeton corporation - Pepsi-Cola Bottling Company of Princeton, Incorporated - James H. Sarver, president; H. P. Hunnicutt, executive vice-president; Anne Marrs Hunnicutt Stafford, vice-president; Harry T. McCoy, secretary-treasurer.

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A. (Continued) Pepsi-Cola Bottling Company of Alderson, Incorporated - Irwin W. Bird, president; H. P. Hunnicutt, vice-president; Harry T. McCoy, secretary-treasurer.

Pepsi-Cola Parkersburg Bottlers, Incorporated - H. Eugene Graveley, president; Ann S. Hunnicutt, vice-president; H. P. Hunnicutt, executive vice-president; Paul Simms, secretary-treasurer.

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Q. I want to know - you have the same title, sir,

in the other three corporations that I have referred to. Now, I'm asking you, do you perform the same duties for the Princeton operation, the Alderson operation and the Parkersburg operation as you do, sir --

A. I'd say --

Q. -- for the Beckley operation

A. I'd say they're along the same line, but not necessarily the same duties; along the same line of duties. In other words, I act when someone is absent, or someone is incapacitated to act, and some of these people operate better than others. Some of them operate better than others, and don't require as much attention from me as some of the rest of them.

* * * * *

Q. Now, who makes up the Board of Directors in the Beckley operation, sir?

A. Board of Directors?

(Document handed to Witness by Counsel for

A. (Continued) H. P. Hunnicutt, Anne S. Hunnicutt,

John S. Taylor, Jr., and Geraldine C. Taylor

Q. Are any of these individuals you have named related to you, sir?

Q. Two of them are related to my wife, not me.

Q. Would you name them, please?

A. Geraldine Taylor and John S. Taylor.

Q. And in what capacity are they related?

A. John S. Taylor is my wife's sister's son.

Q. And the other individual you referred to?

A. She is the wife of John S. Taylor.

TRIAL EXAMINER: Is your wife Anne S. Hunnicutt?

THE WITNESS: Yes, sir.

Q. Is Geraldine Taylor employed by the Beckley corporation?

A. Yes, sir.

Q. In what capacity?

A. Bookkeeper and secretary-treasurer. She handles the money.

Q. Does she have an office?

A. She works out of the Princeton office sometimes.

Q. Is she working out of the Princeton office at this time, sir?

A. Yes, sir.

Q. In what capacity?

A. As secretary and treasurer of the Beckley corporation, and bookkeeper.

Q. Did she ever have an office here in Beckley, Mr. Hunnicutt?

A. Yes.

Q. When was the last day that you can recall that she occupied the office here in Beckley, sir?

(Witness consulted notes.)

A. Prior to September 24th. That's all I can answer on that. Prior, I'd say thirty, maybe sixty days prior to September 24th of 1962. My guess would be sixty days prior to September 24th, 1962.

Q. You say sixty days prior? Is that your answer?

A. Thirty to sixty would be my guess.

Q. Do you actually know, Mr. Hunnicutt?

A. No, I do not exactly; I don't know exactly.

Q. But you do know that she was here in Beckley, and then she moved over to Princeton.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

* * * * *

A. Which corporation are you talking about - the Beckley corporation?

Q. Yes, sir.

A. Yes, sir.

* * * * *

Q. Well, would you name the stockholders, sir?

A. H. P. Hunnicutt, Anne S. Hunnicutt, Geraldine C. Taylor, and John S. Taylor. But I don't know how the stock is divided.

* * * * *

Q. I believe you testified you have a franchise to operate in the Beckley area.

A. That's correct.

Q. Is that correct?

A. That's correct.

Q. Now, what territory does your franchise cover, sir?

A. It covers Raleigh County and a very little end of Wyoming County, down next to the Wyoming line.

Q. Now, what area is covered by the Princeton plant, sir?

A. That covers Wyoming, Mercer, McDowell Counties.

* * * * *

Q. What did you do with your bottling equipment here in the old plant when you moved to the new plant, to the new location?

A. I moved it to the new plant.

(Document handed to Witness by Counsel for the Respondent.)

A. (Continued) The decision was made in June, 1961 to discontinue bottling in Beckley.

* * * * *

TRIAL EXAMINER: *** Is this what came from Pepsi-Cola after you made your decision?

THE WITNESS: Yes, sir.

* * * * *

Q. Was the building erected to such a capacity that it would accommodate bottling?

A. It could have been used for bottling, yes.

Q. Did you consider that when the building was erected?

A. I don't know that I did or that I didn't. We were looking for warehouse space when we built the building.

Q. What type heat did you have in the building, Mr. Hunnicutt?

A. I didn't have any heat in it; no heat.

Q. No heat at all?

A. No heat at all.

Q. Are you sure of that, Mr. Hunnicutt?

A. Sir?

Q. Are you positive of that statement?

A. I think maybe they had a salamander or two in there that the insurance company made us remove. Somebody might have stuck in a little electric heater. But so far as the warehouse stock is concerned, no heat, period; no heat.

* * * * *

TRIAL EXAMINER: When did you move from the old building to the new building?

THE WITNESS: We were moving when this labor trouble started.

TRIAL EXAMINER: That was in May?

THE WITNESS: Yes, sir. The last of April, and I'd say the first of May.

TRIAL EXAMINER: All right.

THE WITNESS: We were trying to move at that time.

TRIAL EXAMINER: All right.

By Mr. Gravitt:

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Q. Now, how are you servicing the Beckley area with Pepsi-Cola products?

A. We're not; we're just half servicing it. The truck is out of Princeton.

Q. Will, will you describe briefly, sir, the type service that is being extended?

A. Well, we have Mr. Smith and Mr. Blevins on trucks, either one or two trucks, covering outlying areas of Princeton - I think one truck comes up from Wyoming, a little bit - I don't know what part.

The route manager is supposed to look after that. I don't tend to those details.

Q. Is it your testimony, sir, that Smith and Blevins are servicing this area --

A. Part of it.

Q. --with the assistance from some of the Princeton

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drivers on the fringe or outlying areas?

A. Yes, sir.

Q. Is this a satisfactory way to service this area, sir?

A. It has to be satisfactory.

Q. Why does it has to be?

A. We don't have any other choice in the matter.

Q. Now, who is this Mr. Blevins you referred to.

A. Sir?

Q. The Blevins you referred to, is that --

A. Russell Blevins.

Q. Is he the sales supervisor?

A. Yes, sir.

Q. For the whole Beckley operation?

A. Yes, sir.

Q. And Smith, he was the plant manager here. Is that correct, sir?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

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Q. At the present time, is this an emergency service, sir?

A. It is; it is an emergency service, yes, sir; it is.

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Q. Did you ever mention to Mr. Smith that you were going to discontinue the Beckley operation.

A. One time.

Q. When?

A. Indirectly. I told him to keep two men of his own choice to close out the stock. I didn't tell him I was going to close the operation. Unless that meant that to him. I told him to keep two men of his own choice on October 1st. I told him to keep two men of his own choice to close out the operation. He could take it for closing it out, or for whatever he wanted to.

Q. Did he --

A. Directly, I did not tell him I was closing the operation. I told him on October the 1st to take two

men of his choice, and keep them to close out the stock.

Q. But still on October the 4th you had the trailer

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running over here from Princeton delivering stock to this Beckley operation --

A. With stop-gap --

Q. -- did you not?

A. With stop-gap merchandise, to lead out the rest of it, yes, sir.

Q. You tried to bring over a daily supply. Is that not a fact?

A. I didn't check the records. I didn't check on a daily basis. I couldn't tell you that. I know that one came in with some short items to run out the rest of the merchandise with. I do that; I remember that, yes, sir. There were some items we were short on.

Q. That's all he brought over.

A. That's all.

Q. That's all you brought from Princeton.

A. Short items.

Q. Short items.

A. Short items.

Q. Well, did Mr. Smith call you on October 1st, or did you call him, or how did you talk with him?

A. I don't recall which way that one was. I think I called Mr. Smith after calling Mr. Frank Rebhan in Charleston.

Q. Why didn't --

A. Monday, October the 1st I talked with Frank Rebhan,

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and then I picked up the phone and called Mr. Smith.

Q. What did you talk to Mr. Rebhan about?

A. I asked him to pull them pickets off that building until I could put some heat in it, until I could put some heat in it, the stuff would freeze and bust, and he told me to go to hell, there'd be pickets on there all winter long.

Q. Now, who is this gentleman by the name of Frank Rebhan you're talking about?

A. I don't know what his capacity is.

Q. Is he with the Teamsters Union?

A. Yes, sir.

Q. Where is his office?

A. Charleston; Charleston, West Virginia.

Q. You didn't get any satisfaction out of talking

with Mr. Rebhan?

A. I told you what he told me, didn't I - to go to hell, there'd be pickets on there all winter long.

I picked up the phone and called Mr. Smith and told him to keep two men of his choice over there to close out the stock. We couldn't operate without heat over there; it would freeze and bust.

That was October 1st.

Q. Did you ever call Mr. Rebhan any more?

A. No, I ain't called him any more.

The same day I talked to him about some con-

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ditions at Parkersburg in the same conversation; the same conversation.

Q. Were your discussions with Mr. Rebhan concerning the Parkersburg operation on more pleasant terms than your discussions concerning the Beckley operation, sir?

A. There wasn't anything unpleasant about either one of them. It was a cold-blooded, brutal business proposition.

Q. Well, what was the nature of the Parkersburg discussion?

MR. TAYLOR: I object to the nature of the Parkersburg discussion, about the facts. He's answered the question about whether it was friendly or unfriendly.

And the nature of the discussion is immaterial to this matter, it seems to me.

MR. GRAVITT: Mr. Examiner, it goes to showing the hostility of the Respondent towards the Union.

TRIAL EXAMINER: Overruled.

Answer the question.

A. The discussion about Parkersburg was we was trying to open up there with our 16 ounce package of Pepsi-Cola, and we had competitors up there under-selling our twelves. And I merely asked him if he knew of anything we could do about it.

He told me he wouldn't help me at Parkersburg, it didn't make a damn what I done. That's the answer I got from

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him. He has the boys up there, too. He's had them since 1952, I think. I asked him to help the boys so we could merchandise the 16 ounce of Pepsi up there. That's the answer I got.

There was nothing unpleasant about it. It was a business proposition.

By Mr. Gravitt:

Q. Just a difference of opinion. Is that the way you would characterize it?

A. No, there wasn't any opinion of either one of us. I just didn't know what to do.

Q. But you knew what to do, sir, in Beckley at the operation, did you not?

A. I knew the only thing to do.

Q. And what was that?

A. Try to get it out of there before it froze; get it out of the building before it froze.

Q. Get what out?

A. Soft drinks. They'll freeze if you don't have heat in the building. Not very many people knows that either. You can't keep soft drinks in a building without heat in it. They'll freeze and bust the bottles.

Q. Is it your testimony, sir, that it was freezing weather here in Beckley inside that plant in October of 1962?

A. It was cold enough to freeze it, yes, sir. It could just happen any minute.

* * * * *

Q. Then you didn't have any drinks freeze there in the warehouse in October of 1962?

A. No, we didn't. I didn't intend to have either.

* * * * *

Q. Did Smith -- Do you recall Mr. Smith calling

you at anytime and telling you that a majority of his employees had signed up for the Union?

A. I recall that.

Q. When did that happen?

A. That was somewhere along about the 4th or 5th of October. I believe that it was the 5th of October, yes, sir.

Q. What did he tell you?

A. He told me that Mr. Harris had signed up the boys.

Q. Signed up --

A. I asked him what boys. He said, "All of them."

I said, "Does that include the ones you paid off last Thursday?"

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He said, "Yes."

I said, "How do you know that?"

And he said he didn't know for sure, I think is the way he put it.

Q. Were you questioning that he had signed all the boys.

A. That's what I asked him, the best that I recall, if that included the boys that we had let go on Thursday. He said it did.

Will you tell me if October 1st was Monday? That'll help me a little bit.

Q. Yes, sir. October 1st, according to the calendar, was on Monday.

A. That's 1962.

Q. Yes, sir.

A. Thank you, sir.

Q. Did you ask him to name the individuals that had signed?

A. No, sir, I didn't.

Q. Did he name them to you?

A. No, sir, he didn't. He did not.

Q. Did you have any doubt that he had signed up a majority, Mr. Hunnicutt?

A. It didn't make any difference to me whether he had signed them or not. There was four of them he signed that

were told on Thursday that we were not going to operate over there; and the other two, so far as I'm concerned, he should have told them that we were drawing out the stock over there on Thursday. That's the end of the pay period.

There was one man involved over there by the name of Kenneth Keffer that there was some question

with insurance on his business, and he was supposed to have been discharged before that, but Mr. Smith, I understand, didn't do it.

Q. Mr. Smith was running this plant for you, was he not, Mr. Hunnicutt?

A. Sure; under my instructions.

Q. He was the boss over here, wasn't he?

A. Up to a certain point, yes, sir. But when he didn't carry out my orders, when I found it out, why, I generally try to do something about it.

Q. Did you advise him to have a card check involving these individuals?

A. Oh, he said, I think, that Mr. Harris wanted to show them to him. He advised me that Mr. Harris wanted to take him out to someone, he didn't care who, and show him those cards.

I said, "Go if you want to; it makes no difference to me. Go if you want to go with him."

I left it up to Smith what he wanted to do.

Q. To your knowledge, did he go check the cards?

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A. Sir?

Q. To your knowledge, did he go check the cards?

A. I didn't hear you, sir.

Q. To your knowledge, did Smith and Harris go check the cards?

A. He told me he did, yes, sir; he told me, that's all I know. Smith told me.

Q. What did Smith told you?

A. He told me he went to Rodriguez and Mr. Harris had the cards signed. That's all right with me.

Q. Did he have all the boys signed?

A. I don't believe he made any statement about how many. He just said he had the cards signed, I think is the way he put it to me.

Q. What did you advise Mr. Smith to do, then, if anything?

A. I didn't advise him to do anything. I had already advised him what to do. I advised him on Tuesday Morning, October the 2nd, what to do.

Q. That was after you talked with Frank Rebhan.

A. On Monday, yes, sir.

TRIAL EXAMINER: When were these employees at Beckley last paid off? When was the last pay for them?

THE WITNESS: Do you know where that is in here, Mr. Taylor?

MR. TAYLOR: May I get it for him?

TRIAL EXAMINER: Yes.

MR. TAYLOR: May I approach the bench?

TRIAL EXAMINER: Yes.

I asked the witness the question. The record shows. Let him see the records.

(Documents handed to witness.)

THE WITNESS: Now, sir, you want me to give each employee, or how do you want me to describe this?

TRIAL EXAMINER: I suppose that would be better, yes; each employee.

THE WITNESS: The last pay period was October 11th, and included Ronald Keffer, total \$51.44; Jackson Brown, of \$33.88; Kenneth Keffer, \$4.98; Russel Blevins, \$180.00.

That covered the time from the 5th of October through October 10 for Ronald Keffer; it covered commission for Jackson Brown, October 5th, October 8th and October 9th; and Kenneth Keffer, 10-5.

THE TRIAL EXAMINER: Through 10-5?

THE WITNESS: No; just one day, October 5.

TRIAL EXAMINER: October 5.

THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right.

Go ahead.

MR. TAYLOR: May I suggest to you, your Honor, that your answer to your question is not complete in view of the

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records that he has.

TRIAL EXAMINER: You mean there's more on that record?

MR. TAYLOR: There's more on the other record, the preceding week which affects the 8(a)(3)s here, yes, sir.

TRIAL EXAMINER: I think I ought to have that, too.

MR. TAYLOR: All right, sir.

THE WITNESS: I believe you have extra copies of this.

MR. TAYLOR: No; just read it to him.

TRIAL EXAMINER: No; tell me what the record is for the preceding week.

THE WITNESS: October 4th -

TRIAL EXAMINER: This -- What day, by the way, do you pay off.

THE WITNESS: Thursday ends the payroll, whatever day it falls on.

TRIAL EXAMINER: For the payroll week ending the night before?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Ending Wednesday?

THE WITNESS: It ends Wednesday night.

TRIAL EXAMINER: Wednesday night; all right.

THE WITNESS: Wait a minute - I don't know; I I don't know. I think that ends on Thursday night.

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MR. TAYLOR: Yes.

TRIAL EXAMINER: Is that right, Mr. Taylor, you've checked those records? The payroll ends on Thursday night?

THE WITNESS: The payroll ends on Thursday night, and generally they try to get the checks ready by Friday evening. The payroll ends Thursday night.

The preceeding payroll, which is October 4th, had Bill Lukach, \$78.48 --

TRIAL EXAMINER: And that's through what date?

THE WITNESS: That is through October 4th, in in full.

TRIAL EXAMINER: All right. Go ahead.

THE WITNESS: Ronald Keffer, \$66.11; Jackson Brown, \$79.65; John Davis II, \$37.06; Kenneth Keffer,

\$45.02; Dallas Milam, \$10.51; Russell Blevins, \$90.00; Jimmy Meadows, \$75.00 --

TRIAL EXAMINER: What's that last name?

THE WITNESS: Jimmy Meadows.

TRIAL EXAMINER: Meadows?

THE WITNESS: M-e-a-d-o-w-s, yes, sir.

Bill Wardenski, \$73.60.

That included nine.

By Mr. Gravitt:

Q. What was your last statement, sir - including what?

A. Included nine men.

Q. What included nine men?

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A. The payroll did, this payroll.

Q. That's --

A. This payroll had nine men on it.

Q. That's the Beckley payroll --

A. Yes, sir.

Q. -- as of October 4th.

A. Yes, sir; had nine.

Q. As you have named it, that's the complete payroll, is that right?

A. That's right.

Q. Is that your testimony?

A. I didn't say it was a complete payroll. I give you the names on this payroll from Mrs. Taylor. That's all I know about. I can't tell you any more about it. I don't know.

MR. TAYLOR: It may be stipulated --

A. (Continued) I don't see Pete Smith on there. That's the only one that couldn't be on there. I don't know why he isn't on it.

MR. TAYLOR: It may be stipulated, with the exception of Mr. Smith, that is a complete payroll.

A. (Continued) With the exception of Mr. Smith, that is a complete payroll, yes.

By Mr. Gravitt:

Q. I thought you didn't know, Mr. Hunnicutt. Didn't

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you just so testify?

A. What?

TRIAL EXAMINER: Strike that.

Go ahead.

MR. GRAVITT: Withdraw it.

TRIAL EXAMINER: Go ahead with the facts.

MR. GRAVITT: All right.

TRIAL EXAMINER: I can read this record. I've got to read it. You're not before a jury.

MR. GRAVITT: I'll withdraw the remark.

TRIAL EXAMINER: All right. Well, refrain from that type of jury-type of questioning. I don't need it.

By Mr. Gravitt:

Q. When were --

MR. GRAVITT: May I see the records, sir?

(Documents handed to Counsel for General Counsel.)

By Mr. Gravitt:

Q. When were the services of Bill Wardenski terminated?

A. It's on the record.

Q. I'll show you the records and ask if you can tell me.

(Documents handed to witness.)

A. October 4th.

By Mr. Gravitt:

Q. As I understand --

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A. Let's see - you asked me about Wardenski? Let's see - he was on October 4th payroll. He's not on the 11th. His term ended Thursday night, October whatever.

Q. Did he work a full week for the payroll ending on October 4?

A. He worked what that payroll shows, is all I know. I know this payroll ended October 4th, and the last day that this payroll covers is October 4th. If there had been any more time for Wardenski he would have been over on the 11th payroll.

Q. Sir, my question is, in case you didn't understand it, is whether Wardenski worked the entire week or just part of the week, or one day, or what?

A. Wardenski worked \$73.60 worth, which ended October 4th. That's all I can tell you. I don't know.

Q. Did Jimmy Meadows perform any work at the Princeton plant?

A. Jimmy Meadows' duties primarily was hauling to Beckley. That's his prime duties. Whether he done anything else or not, I don't know.

* * * * *

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Q. Is he still on the payroll?

A. Yes, sir, he's still on the payroll.

Q. What payroll is he on?

A. Well, he's not hauling to Beckley, is he? He's on the Princeton payroll, I suppose.

* * * * *

TRIAL EXAMINER: Yes.

MR. TAYLOR: It may be that Mr. Gravitt wants something else, but in the original part of this dispute Mr. Blevins was classified as a supervisory employee, and if that is what Mr. Gravitt wants to know, now, it may be stipulated that he is a supervisory employee.

MR. GRAVITT: With the authority to hire and fire.

MR. TAYLOR: I will not stipulate that, because I do not know about that. I have not heard that he ever had that authority. But I don't know about firing; I know that he helped hire some people one time or other. I will stipulate that he is a supervisor within the meaning of the Act.

MR. GRAVITT: I'll so stipulate, and appreciate Counsel's cooperation.

* * * * *

Q. Did you consult with the Union, Mr. Hunnicutt,
on

this matter of whether you would close this plant here

in Beckley or not?

A. I didn't consult with any union. The plant was closed before there was any union involved, to my knowledge.

Q. Did you refuse, sir, to meet with the Union to discuss working conditions, wages, and hours, and conditions of employment?

A. What period do you refer to, now?

Q. The beginning, on October 4th, and thereafter.

A. To my knowledge, there was no request made for me to confer with them. I think the word came to me that Mr. Harris had contacted me the last time, and for me to contact him. And then one night Mr. Jackson, I think his name was, called me at my home about it. I don't remember the date.

Q. Do you recall --

A. I think it was along about Monday or Tuesday, October the 1st or 2nd.

Q. When Mr. Jackson called you?

A. Yes, sir.

Q. Would you just tell us briefly what the conversation was about?

A. Well, he said he wanted me to sign for his men over here at Beckley, that he had them signed up. And I told him that my plans for Beckley didn't include signing men, we was closing the warehouse out, and they were to blame for it.

Q. Who is they?

A. The Teamsters Union.

Q. Did he disagree with you?

A. Well, I suppose he did disagree with me, yeah; he would.

Q. What did he say?

A. I told him we had no heat in the place, had no lights --

Q. Sir, I asked you what he said.

A. I misunderstood you. You want to know what he said.

He said he wanted to represent those employees over there. And he said he had them signed up in the union.

And I said, "Yes, that's some more of your pro-signing, locking the door after the horse is stolen. You signed those employees after they were paid off over there, and after the decision was made to close out the warehouse. They came to you in desperation trying to get the Union to hold their jobs for them when they all knew that the plant - the warehouse was to be closed out due to no heat in it, and due to no lights in it, and due to the cesspool out there that hadn't been completed, and they were ordered not to use the toilet facilities, and they broke the doors down and flushed it all over the yard."

That's what I told him. I told him we couldn't operate over there; we had no heat. There was no use of

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fooling with anything; we couldn't operate.

Like I told him about calling Frank Rebhan, and asking him to remove the pickets so people could cross the line and put heat in the building.

* * * * *

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Q. Did you ask him to get any statements, from the employees to the effect that they had signed up for the Union,

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sir?

A. I did not ask him to do anything like that. The only conversation I had concerning Mr. Harris' slips with him.

Q. Sir, I didn't hear you.

A. Concerning Mr. Harris' slips is the only thing that we discussed, to the best of my recollection.

Q. Now, the slips - are you talking about membership applications?

A. I'm talking about the signed slips of Mr. Harris', where he had the men signed. That's all I recall

talking to Mr. Smith about on that occasion.

* * * * *

Q. Now, is it your testimony, sir that you asked Mr. Smith to get the employees to sign statements that they had signed those applications for membership in the Teamsters?

MR. TAYLOR: Your Honor, I object to the question --

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A. I did not say that.

MR. TAYLOR: Just a minute.

A. (Continued) I say I did not.

MR. TAYLOR: Okay. That's the reason I was going to object. He just put it to him on an opposite basis, and got --

A. (Continued) I just answered that question and told you I did not request Mr. Smith to get any statements.

* * * * *

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Q. Mr. Hunnicutt, using your records there, would you just name the number of employees, sir, that you had working, say on the outside here in the Beckley plant from January, 1961 through May, 1962, sir? Just name the month and the number, if you understand the question.

A. I understand that, sir.

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January, 1961, 7; February, 5; March, 5; April, 7; May, 6; June, 9; July, 5; August, 5; September 4; October, 7; November, 7; December, 6.

January, 1962, 5; February, 5; March, 7; April, 6; May, 11.

* * * * *

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Q. Now, since the closing of Beckley, since the servicing of this area from Princeton, as you have testified just about a half an hour, or an hour ago, you stated that Mr. Smith - correct me if I'm wrong - Mr. Blevins was servicing this area. Now, also, there were a couple of other trucks, you don't know who the drivers were, also, serving the area.

A. Yes.

Q. Which makes a total of four --

A. Yes, sir.

Q. -- which is -- So as a matter of fact, then, there isn't any appreciable difference between the total number of trucks you had serving this area from Beckley, the Beckley plant, as compared to the number of trucks you had servicing from Princeton.

A. Give or take one or two.

* * * * *

By Mr. Zazzali:

Q. You discussed the cold weather here in Beckley. Right now, you can see it from the window outside, it's a particularly cold time of the year. Is this the coldest time of the year in Beckley in your experience in this area, Mr. Hunnicutt?

A. I don't keep the winter records in Beckley. I don't keep them anywhere. I don't keep the records on the weather.

Q. When do you think it gets particularly cold here, freezing weather in Beckley?

A. It will vary; it will vary. Generally concede, anywhere from January 15th on up it gets cold weather. Sometimes it's more, and sometimes it's less. It will vary.

MR. ZAZZALI: Your Honor, on the subject of Meadows, he was brought up earlier on the direct examination by the

General Counsel. Yesterday you indicated that you would take judicial notice of all the records in the earlier proceedings. I am directing your attention now to the fact that Meadows was not on the payroll sheet submitted by the Employer at the time of the election, nor was he involved in any stage of the initial labor dispute. My point is that he is in the appropriate unit, if any, at Princeton and not at Beckley, and I think those records go into that. I don't care to repeat, in the interest of time.

* * * * *

By Mr. Zazzali:

Q. You stated there was no heat, no lights, no toilets in the Beckley plant, and that was one of the reasons that they closed down, or you closed it down.

What, may I ask, did the men use for toilet facilities during the months you had the plant open, the new plant?

A. Maybe I'd better explain that toilet deal to you, so you'll understand it.

Toilets were installed in the plant.

Q. I'd rather you wouldn't explain, sir. I'd rather you simply state --

A. Well, I have to explain it to state it to you. If you want it explained, I'll explain it.

MR. TAYLOR: Just a minute.

TRIAL EXAMINER: You let the witness answer.

A. (Continued) The toilets were actually in the plant. The cesspool was on the outside of the plant. The lines were run from the toilet to the cesspool, and they were constructing this the morning of May the 15th, the disposal ditches away from the cesspool. They never got those ditches in. And the

cesspool was wide open out there. And the Health

Department regulations says that so many hundred feet of disposal line shall be in there and covered.

None of that was in; not a bit of it. The actual commodes was in the building, but they was unuseable due to the fact that the cesspool and the disposal lines had not been installed, and we were forbidden to use them by the Health Department until they approved the installation.

Now, does that explain the cesspool to you, and the toilets?

There was no heat, and no lights. They had strung one string of lights across the building.

* * * * *

Q. Excuse me. You've testified that you spoke with Mr. Jackson of the Union on or about October 9th, 1962, and he requested recognition, and you made statements the Teamsters have ruined you, and so forth.

Had you made any statements prior to that time to any Teamster official that the Teamsters --

A. To who?

Q. To any Teamster official, that the Teamster Union

had ruined you?

* * * * *

JACKSON DARRELL BROWN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Tell the Reporter your full name and present home address.

THE WITNESS: Jackson Darrell Brown; present home address Box 104, Kimball, West Virginia.

Direct Examination

By Mr. Gravitt:

Q. Are you attending school in Tennessee?

A. Yes, sir.

Q. What is your address there, Mr. Brown?

A. Box 396, Carson Newman College, Jefferson City, Tennessee.

Q. What are you studying there, sir?

MR. TAYLOR: Your Honor, that's irrelevant. We'll stipulate he's in school.

TRIAL EXAMINER: How is that relevant?

MR. GRAVITT: It can go to credibility, your Honor. It's a preliminary question. It could go to

credibility easily. I'm merely asking it for the purpose --

TRIAL EXAMINER: Has his credibility been attacked?

MR. GRAVITT: I would say yes and no to that due to off-the-record conversations that's been in the room.

TRIAL EXAMINER: Well, I know nothing about off-the-record conversations. I don't want to hear that.

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Go ahead with your facts.

By Mr. Gravitt:

Q. How long have you been attending school?

A. I started this year, the 28th of January, my senior year.

Q. Did you ever work for the Respondent in this case, sir?

A. Yes, I did.

Q. Can you tell us approximately when you were hired, please, sir?

Approximately May 29th, 1962.

Q. And do you know who hired you?

A. Mr. Pete Smith, or Cecil, or Kyle, or however his name is listed.

Q. Did he tell you this was a temporary job when he hired you?

A. No, he didn't.

Q. What were your duties, sir?

A. I was a route salesman.

Q. Did you sign a union card?

A. Yes, I did.

Q. When did you sign it?

A. October the 5th, 1962, at approximately 6:15 to 6:30 p.m.

Q. Were you working that day?

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A. I worked that day, yes.

Q. Did you work anytime thereafter, sir?

A. I worked three days thereafter.

Q. Did you talk to any of the other employees about signing up with the Union?

A. Yes, I did.

Q. Where did you sign the Union card?

A. In front of the Pepsi-Cola Bottling Company on Stanaford Road.

Q. Were any --

A. In the road.

Q. Were any other employees present?

A. Yes; the best -- I believe there were five, counting myself.

Q. Could you name them, sir?

A. Let's see -- There was Ronald Keffer, Kenneth Keffer, John Davis, Bill Lukach, and myself.

* * * * *

Q. Now, on October the 5th, 1962, after you had signed the Union card, what did you do then?

A. I went back into the plant. Mr. Harris followed, and Mr. Harris told Mr. Smith what had happened. Mr. Smith told us to wait, and he went into the office. I assume and called Mr. Hunnicutt.

When he returned from the office --

MR. TAYLOR: Your Honor, I object to what he assumes.

By Mr. Gravitt:

Q. Did --

TRIAL EXAMINER: I'll make note of the objection and I'll consider it in evaluating the witness' testimony.

MR. TAYLOR: All right.

TRIAL EXAMINER: Let him finish his answer.

MR. TAYLOR: Excuse me, sir.

TRIAL EXAMINER: Now, can you pick up, Mr. Witness, where you stopped?

A. (Continued) Mr. Smith, when he returned to the office after calling Mr. Hunnicutt, which he told us he had done, he told us to go home and report to work the next day. There was a trailerload of drinks there at the time, and Mr. Smith said that Mr. Hunnicutt had told him to unload the drinks himself, and for us to depart.

Then, that's what we did. We just left.

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By Mr. Gravitt:

Q. Do you know who drove the trailer over?

A. I believe it was Jim Meadows. I cannot be positive of it, but I am - to the best of my knowledge, I'll put it that way, it was James Meadows.

Q. Was it a full load?

A. Yes, it was. It included all types of drinks; it also included some new throw-away bottles which had not been distributed in the Beckley area until that time. That was the first time we had had them in Beckley. They were also on the trailer.

* * * * *

Q. Can you tell us the date of this meeting, as you recall it?

A. August 29, 1962.

Q. And where was the meeting?

A. In the office of Mr. Hunnicutt at the Pepsi-Cola Bottling Company, Incorporated at Princeton.

Q. Did anyone tell you to attend this meeting?

A. Yes; we were told by Mr. Smith that Mr. Hunnicutt wanted to see each employee from the Beckley corporation there.

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Q. Can you fix the time when Mr. Smith told you this, sir?

A. The meeting, to the best of my knowledge, was on Wednesday night. Mr. Smith told us two days before that, which was approximately Monday.

Q. What did he tell you?

A. Mr. Smith?

Q. Yes. About the meeting.

A. Nothing, except that Mr. Hunnicutt wished to speak to each one of us concerning the election which was to take place on Friday, and that he wanted each one of us over there that night, and that transportation would be supplied for us.

Q. Where did the meeting take place in the plant?

A. In Mr. Hunnicutt's office.

Q. And was Mr. Hunnicutt present?

A. Yes, he was.

Q. Do you recall who else was present?

A. The employees from Beckley, and Mr. Sarver, were there.

Q. Do you know who Sarver is?

A. Only from information gathered from other sources. I do not know him personally. I know that he is an officer in the Princeton corporation, and that's about all I know of him, and that he is the son-in-law of Mr. Hunnicutt.

Q. Now, other than the employees of Beckley, who else

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was there?

A. Well, there was Mr. Smith, and Mr. Blevins, myself, there was Ronald Keffer, Kenneth, Bill Lukach, Dallas Milam, John Davis, and Jack Goad.

Q. Did Mr. Hunnicutt mention the Union?

A. Yes; that was the whole purpose of the meeting, or from what I gathered.

Q. Well, you just tell the Trial Examiner, please, now, what Mr. Hunnicutt said at this meeting.

A. Well, we were all there, and present, and he told us that, as we knew, there would be an election on Friday; and he told us in no uncertain terms that if we did not vote out the Union, the Teamsters, that we would no longer have a job.

He condemned the Teamsters in no uncertain terms. He told us that if we thought anything of our God or our country, that we would vote the damn things out of Beckley.

Now, those were, to the best of my knowledge, his exact words.

He, also, told us that they had ruined him; that we could look at the Beckley operation now and see that they had been ruined, that the sales were off there, and that no one was to blame but the Teamsters, and the group that had walked out.

He also condemned part - or I'll say part of the

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drivers which had walked out at the first walk-out.

He promised us that - in certain terms that we would -- that if we voted them out, if we won the election, that we would be almost assured of jobs if we did our jobs right; that new promotional schemes, or ideas, would be put up; that he would help with advertisement; that we would get what new equipment we had to have to operate efficiently; and that he would help us rebuild the Beckley territory.

And that, in essence, is the entire meeting.

Q. Do you recall anything about locking the doors

being said?

A. Yes, He said that if --

I did forget that.

MR. TAYLOR: Your Honor.

TRIAL EXAMINER: Go ahead.

A. (Continued) He said that if the Teamsters were not voted out, that he would lock the doors, that he would not operate a plant under Teamster rule, or under Teamster control.

By Mr. Gravitt:

Q. Do you recall him saying anything about buggies or trucks?

MR. TAYLOR: Your Honor, I object. I've let him lead him up to now. I should have objected before. I object to this question as leading.

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MR. GRAVITT: Well, I --

MR. TAYLOR: Further, the witness has said this is the entire conversation.

TRIAL EXAMINER: Overruled.

Go ahead.

By Mr. Gravitt:

Q. You may answer, sir.

A. Well, what I meant by new equipment was those things which he promised, such as new buggies, or handtrucks as we call them, and any other such material, I figured - I gathered from the conversation --

MR. TAYLOR: Object to the word gathered; I object to what he gathered.

TRIAL EXAMINER: Let him finish the answer.

Go ahead

You gathered from what he said --

A. (Continued) -- from what he said that he meant, also, besides the new buggies, that was one thing which he did mention, would also have been new chains, and equipment for the truck, which was needed. In other words, the chains which hold the drinks on. And some of the trucks were in pretty bad shape concerning that particular item.

But he did not specifically mention anything that I can recall other than the new buggies; and he said any new equipment we needed.

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By Mr. Gravitt:

Q. Well, what is the buggies that you're referring to?

A. It's a two-wheel cart which is used to stack the Pepsi-Cola, or the drinks on to move them from one location, either from the truck to the store, or wherever you would need them at the time.

Q. Do you know how the pay checks for the employees at Beckley were brought over?

A. There was two different ways which they were brought.

Q. Would you tell us, please?

A. Mr. Smith at times went after them on Friday afternoons; and at times they were sent over by the trailer, or on the trailer. It's according, I think, to how Mr. Hunnicutt wished to have them delivered that day.

Q. Do you recall whether or not your checks were brought over on the trailer on October 5th?

A. No, they were not.

Q. Did you inquire about your check on October the 5th?

A. Yes, we did.

Q. Who did you ask?

A. And we were told -- We asked the driver of the trailer if he had brought our checks. And he said, "No, you'll have to obtain them at a later date."

And to the best of my knowledge it was either Saturday afternoon or Monday morning before we received our

Q. Had they ever been this late before in getting your check?

A. Yes; at times. But we were also notified beforehand that they would be late.

Q. Were you notified on this occasion?

A. No, we were not. We were all expecting our checks on Friday evening.

Q. Did you ever have any discussion with Mr. Smith about signing union statements?

A. Yes, we did. Saturday morning --

Q. Will you tell us, please, what Mr. Smith said to you?

A. On October the 6th, I reported for work, and Mr. Smith told us, just Ronald Keffer and I, if you please, we came together, we were riding together at the time, and Mr. Smith told us that neither one of us could go to work until he contacted Mr. Hunnicutt.

He made three different calls to Princeton before he reached Mr. Hunnicutt. And when he did reach him, he told us that Mr. Hunnicutt wanted our application cards verified by a Justice of the Peace; that he would have to get hold of Mr. Harris.

He also told us that Mr. Hunnicutt wanted from us a written statement stating whether or not we had signed

application cards, and for us to sign our names to

them.

Q. Did you write out such a statement, and sign it, sir?

A. Yes, we did. Each one of us - I believe all of the employees with the exception of Dallas Milam wrote one on the back of a sales slip which we tore from one of the sales pads on the desk in the office of Pepsi-Cola Company.

Q. Can you recall just the essence of what you wrote on it and signed?

A. I can give you the general idea; the exact words, probably not. It was something like, "I . . ." and I'll use my name, " . . . Jackson Brown, did, on October the 5th, 1962, at 6:30 p.m., sign, or fill out and sign an application for membership in Teamsters Local 175, and do hereby make this statement to verify such."

And then I signed it. That is the general terminology which I used. I won't guarantee that to be exact.

Q. What did you do with it when you signed it?

MR. TAYLOR: Excuse me. I move to strike his previous answer on the ground that his statement would be the best evidence of what the statement contained, if there is a statement.

TRIAL EXAMINER: I'll reserve decision on that. I don't know what happened to the statement yet.

A. The statements --

TRIAL EXAMINER: Go ahead.

By Mr. Gravitt:

Q. What did you do with them when you signed them?

A. We give the statements to Mr. Smith, and what he did with them, I don't know. But he had all the statements clipped together.

Q. Now, was this before Smith and Harris went for the card check?

A. Yes, it was. This was while Mr. Smith was waiting on Mr. Harris to come.

TRIAL EXAMINER: On what day?

A. (Continued) From his home to the office.

TRIAL EXAMINER: On what day was this?

THE WITNESS: This was October 6th.

TRIAL EXAMINER: This was still Saturday.

THE WITNESS: Yes, sir, this was in the morning.

TRIAL EXAMINER: All right.

By Mr. Gravitt:

Q. Did you work in this particular day?

A. I was told to come in. I was not -- I did not

work and receive pay for it, although I did help Mr. Keffer load, or unload and load a truck.

Q. Who told you to come in?

A. Mr. Smith.

Q. And did he tell you to report back to work at another

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time?

A. Yes. When I left there at approximately 11:30 he told me to report to work Monday at the regular time, which was 7:00 o'clock.

Q. Were Davis and Keffer present at anytime you were at the plant?

A. Yes, sir. Mr. Davis was there. In fact, that was the first day that Mr. Davis had been there since, I believe either Tuesday or Wednesday of that week. He had been sick all week, and --

Q. Did you --

A. We went after him and brought him to the plant. Kenneth Keffer was there, and Bill Lukach was there.

Q. Did Mr. Smith say anything to Davis and Ken Keffer about reporting to work in your presence?

A. No. That was the first time that John Davis had been notified that he had been laid off.

Q. Who told you that he was laid off?

A. Mr. Smith.

Q. Did you hear him?

A. I was in the office when he told him that he was not to report to work any more, that he had been laid off. Now, unless Mr. Smith there had called him on the phone and told him, that was the first time which Mr. Davis had been notified of it.

Q. Well, do you recall Smith saying anything else to Davis about being laid off in your presence?

A. No; that was the only time that I recall.

Q. Now, was Davis hired along about the time you were hired, or do you know?

A. No; it was, I would say up in July, or maybe the 1st of August when Davis was hired. There was a time there during the summer when they hired several different drivers, because of a turnover. Actually in any new - when you hire an entirely new group there's a certain amount of turnover.

Q. To your knowledge, Davis was hired in July. Is that correct?

A. Yes. Or the -- Somewhere between the middle of July and the middle of August. I'll put it that way.

Q. Do you know when he went on sick leave, or approximately?

A. The first of the week. That would have been about either the 1st or 2nd of October.

Q. Did you -- were you present when Mr. Smith talked to Ken Keffer about working?

A. Not on Saturday morning, no. On Friday -- or Thursday afternoon, when we came in, Kenneth and I were pretty close together. Kenneth was in just a little before I was, or I was a little before Kenneth - I don't remember - We were both there at the same time. And I know that

Mr. Smith told Kenneth and I to come in the next morning, but that one of us would possibly be terminated, but he did not say that we would be, that he and Mr. Blevins were working on something. And both of us worked Friday.

Now, I was later informed sometime - Sunday, I believe it was - by Ronald that Kenneth had been laid off. But I did not know it until then. I was not there when Mr. Smith told Kenneth anything about being laid off.

Q. Did you work on October the 9th?

A. That was Tuesday?

Q. Yes, sir. Tuesday.

A. Yes, sir.

Q. Do you know of anyone else who worked on that day, sir?

A. Ronald Keffer worked, Mr. Smith and Mr. Blevins were the only four at the Beckley plant that worked. Now -- That's what you're speaking of?

Q. Yes, that's what I asked.

When was the last day that you worked at the Beckley plant, sir?

A. The last day I actually drove a truck was October the 9th. But I was in Princeton on October the 10th on Mr. Hunnicutt's request.

Q. Well, did you -- how come that you went to Princeton, or how were you informed about going to Princeton?

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A. Mr. Smith told Ronald and I Tuesday afternoon when we came in that Mr. Hunnicutt wished to see us in Princeton the next day.

Q. Was anything further said about it that you can recall?

A. Well, nothing except that Ronald and I were sort of wondering what he wanted to see us about, and we argued back and forth between ourselves as to whether or not we ought to go, or whether it was really important, and Mr. Smith told us to come in the next morning --

Q. Come in where?

A. Into the plant.

Q. Did you go in?

A. Yes, we did. And Mr. Smith called Mr. Hunnicutt again Wednesday morning, and Mr. Smith told us that Mr. Hunnicutt wanted to see us in Princeton

that morning.

Q. How did you all get over there?

A. We went in Mr. Blevins' car.

Q. And where did you go when you arrived at Princeton?

A. We went to the office of Mr. Hunnicutt in the Princeton plant.

Q. Did you see Mr. Hunnicutt?

A. Yes, we did. On several occasions.

Q. Well, tell us, now, when you saw him on the first occasion, and what he said.

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A. Well, when we first went in Mr. Keffer and I were together. He talked to Mr. Keffer and I, both of us at one time. He said he was terminating, or closing up the Beckley operation; that due to the lack of heat and lights in the Beckley plant that it was impossible to operate during the winter months.

And then he asked Mr. Keffer and I what we would do about it. Of course, that was a leading question. I didn't answer.

He then said that we could thank the Teamsters for the plant being closed down, and that the Teamsters had put him out of business in Beckley, and that someone was going to have to pay for it.

Q. Well, now, did you talk to him on another

occasion, or did he talk to you on another occasion?

A. Yes, at another time he talked to me privately.

Q. Well, now, how long was that conversation after the one you just related to us?

A. Oh, I'd say an hour.

Q. And where did it take place, sir?

A. Also in the office of Mr. Hunnicutt.

Q. And who was present at that time?

A. No one but Mr. Hunnicutt and myself.

Q. Well, now, will you tell the Trial Examiner, please, what was said on this occasion?

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A. Mr. Hunnicutt told me that the plant was being closed down; he also mentioned again that he was - the fact that he was closing it down was the Teamsters; that they had put him out of business.

I at this time asked him - he mentioned again, once again the lighting in the building - I told him that I would put the lights in for him. And he refused my offer. He said, no, that he couldn't do it.

He also -- I then asked him if he was going to run the Beckley area out of the Princeton plant, and he told me it was none of my damn business, that as far as I, or any other employee of Beckley was concerned that the Beckley corporation had been dissolved.

And so I therefore thought -- He said, "Now, if you want to make application in Princeton, you can do so." But at the time I didn't, and later when I tried to get in touch with Mr. Hunnicutt to make application there, I was unable to.

Q. Did you have any further conversation with Mr. Hunnicutt that day?

A. No; nothing more than just passing him in the hallway, or something like that.

Q. Well, you mentioned you offered to put in lights. Are you an electrician?

A. Yes, sir; I am qualified in four different states

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as a qualified electrician, eleven years experience.

Q. Well, were there any lights for you to put in? Did you see any?

A. I did not see them. I was told by Mrs. Taylor that the lights had been bought for the Beckley operation, and that they were stored in Princeton.

Q. Now, who is Mrs. Taylor?

A. She was the secretary-treasurer, I believe, of the Beckley corporation.

Q. And when did she tell you this?

A. One afternoon - or one Saturday when I was in Beckley - or Princeton with Mr. Smith. Something had been brought up about the lights, and I remember

them saying that.

* * * * *

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Q. Was there any overflow of the toilet facilities, to your knowledge?

A. None that we ever knew of. And the cesspool was open and we could have seen it if there had been.

* * * * *

Q. If you can recall, sir, just tell us approximately how many cases you were selling, say an average day when you began working there.

A. That's pretty hard to say. When I started there I'd say that an average day was anywhere from thirty to sixty cases, when I first began, or after the first walkout.

Q. Now, along about the first of October, 1962, what were you running as an average?

A. Well, I was averaging better than a hundred cases per day easily, and a lot of days close to two hundred a day. I think that the pay record, itself, will speak of it.

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Mr. Hunnicutt give it, the last full week that I was there was almost \$80.00. That is figured on .09¢ a case - .09 out and .04 in - .09¢ for the full ones, and .04¢ for the empty ones.

Q. And about what was it the first week you were there, sir?

A. Oh, I'd say it was anywhere from \$20. to \$25.00 maybe.

TRIAL EXAMINER: That last pay check you got, was that all commission?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: No straight salary?

THE WITNESS: No straight salary. It was completely commission.

* * * * *

Cross-Examination

* * * * *

Q. Excuse me, sir. Then you did not apply for membership in District 50, United Mine Workers of America. Is that correct?

A. Oh. We filled out cards, yes, but it was never filed, because we were told that they could not handle

case because the Teamsters were involved in it.

Q. But you did make application for the Mine Workers. Is that correct?

A. Yes, we did.

Q. That was after you went to work at Pepsi-Cola Bottling Company of Beckley?

A. Yes, sir.

* * * * *

Q. How long did you work on October 6th?

A. Half a day, approximately.

Q. Out on your truck?

A. No; it was in the plant. I testified to that yesterday.

Q. You didn't punch a clock, or anything of that kind, did you?

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A. I told you I received no pay for it.

Q. You hadn't applied for any pay for it either, had you?

A. No; I didn't ask for pay for it. That was not the first day which I had worked without pay.

Q. You helped one of the Keffers, as I recall.

A. That's right.

Q. You came out because he asked you to, didn't he?

A. I came out because Mr. Smith asked me to. Mr. Smith was my boss, not Mr. Keffer.

Q. Yesterday you testified that Mr. Smith told us to go home and come out to work the next day. Whom did he tell to come out to work the next day?

A. Ronald Keffer and myself.

Q. You testified yesterday about a meeting in Princeton on August 29th, 1962. That was several days prior to the election which was held in Beckley, Isn't that right?

A. That is correct.

Q. You testified Mr. Hunnicutt was present.

A. That is right.

Q. The employees for the Beckley corporation.

A. That is right.

Q. That would include, of course, Russell Blevins and Kyle Smith.

A. That's right.

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Q. Who else was there, sir?

A. Mr. Buck Sarver was there from the Princeton plant, Ronald Keffer, Kenneth Keffer, Dallas Milam, myself, Bill Lukach, John Davis and Jack Goad.

Q. Well, exclusive of those employees, who else

was there besides Mr. Sarver and Mr. Hunnicutt?

A. No one, as to my knowledge, except Mr. Sarver and Mr. Hunnicutt, and the employees from Beckley, including Mr. Smith and Mr. Blevins.

Q. You didn't see a man named Irwin Bird there?

A. He could have possibly been there. I don't remember seeing him, nor speaking to the man.

Q. Do you know him?

A. No, I don't.

* * * * *

Q. As a matter of fact when you went in that meeting over there at Princeton you asked why the Mine Workers weren't on the ballot, didn't you?

A. No, sir.

Q. That was never discussed.

A. I did not ask that question.

Q. Was that question asked over there?

A. Not that I recall.

Q. It wasn't discussed.

A. The only thing that was discussed about the

Mine Workers was the fact that Mr. Hunnicutt told us that if we wanted another union he would consider it, but he would not work under the Teamsters.

Q. He told you he would consider another one, but not the Teamsters.

A. That's right.

Q. As a matter of fact, you asked him, or somebody over there asked him why the Mine Workers weren't on the ballot, and he told you you'd have to take that up with the Mine Workers and not with him. Isn't that right?

A. I don't recall any such conversation.

Q. Further than that, the question was asked over in the meeting about what would happen if the Teamsters prevailed in the election, and you were told, weren't you, that it was just like in any other election, that if the Ins won, they stayed in, and if the Outs won, they took - the Outs took over. Isn't that right?

A. He told us that if the Teamsters won he would close the plant down, that he would not operate under the Teamsters Union.

Q. He didn't tell you that if the Teamsters prevailed

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in the election that you all would be replaced by those strikers who had been out there all summer?

A. No, he did not. He said he would close the plant down before he would operate under the Team-

sters.

Q. No discussion about the strikers.

A. Sure there was a discussion.

MR. GRAVITT: I object to the interrogation regarding the strikers.

TRIAL EXAMINER: Overruled.

A. (Continued) Naturally; they had as much a part in it as we did.

By Mr. Taylor:

Q. And they voted, didn't they?

A. Naturally.

Q. And --

A. You had to have two sides before anything could be voted on.

Q. You knew as a matter of fact if the Teamsters won you wouldn't have a job, didn't you?

A. I knew as a matter of fact if they won, Mr. Hunnicutt said he would shut the plant down. That was our concern. We had a job, and we wanted it, naturally. You've got a job, you want to keep yours. I wanted to keep mine. But we voted them out because we thought enough of Mr. Hunnicutt to keep his business going over there, and he said he'd have to close

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it down before he could operate under them. But Mr.

Hunnicutt didn't live up to our expectations at all.

Q. As a matter of fact, you voted them down because you knew these other people would replace you if they won.

A. We voted them down because Mr. Hunnicutt requested we vote them down, and he told us he would close it down and we'd be out of a job.

Q. That night when you got over there you discussed working conditions, didn't you?

A. Naturally; yes, we did.

Q. And you went over there for that purpose, didn't you?

A. I told you what I went over there for, Mr. Taylor.

Q. You went over there for that purpose, didn't you?

A. I didn't go over there for any purpose. I went over there because I was told to go. Ask Mr. Smith what we went for. He talked to Mr. Hunnicutt; I didn't.

Q. And in the course of the conversation there that evening, you made certain demands, didn't you?

A. We didn't demand anything; we asked.

Q. All right. You asked for certain things, didn't you?

A. That's right.

Q. You asked for a uniform allowance, didn't you?

A. I believe so.

Q. You asked for some new equipment.

A. We did.

Q. You asked for some advertising help.

A. That's right.

Q. And what were you told about the uniforms?

A. He told us that as soon as the thing was settled, as soon as the Teamsters were out, that he would see what he could do about it.

Q. Didn't he tell you as a matter of fact that he would do for you what he did for the boys in Princeton, and whatever they got at Princeton you'd get in Beckley? Isn't that what he told you?

A. That's right. But he didn't do it then.

Q. Isn't that what he told you?

A. Yes; he might have told that.

Q. All right. And didn't he further tell you that if you needed equipment, we'd get equipment?

A. Yes, he promised. I told you yesterday he promised us new equipment.

* * * * *

Q. As a matter of fact, you went over there because you had asked Pete Smith in advance to see if you could come, isn't it?

A. No, sir. We were very much upset, that is correct, because he had laid off four other drivers -- three other drivers -- or four drivers, excuse me -- and was expecting us to run a territory that five trucks could not handle at that time, and expected four men to do it. We were upset about that, yes. And if you want to consider that we went over there to see if we could get more help, yes, we did. But we also went because Mr. Smith told us Mr. Hunnicutt wanted us, because Ronald and I argued about going.

* * * * *

Q. Who went to Princeton on October 10th with you?

A. Ronald Keffer, myself, Mr. Blevins and Mr. Smith.

Q. And you and Ronald went in to see Mr. Hunnicutt, didn't you?

A. That is absolutely correct.

Q. And he told you they were closing the plant, didn't he?

A. He did then.

Q. And you already knew it, didn't you?

A. Oh, no.

Q. You knew it because Pete Smith had told you that before, hadn't he?

MR. GRAVITT: Objection; arguing with the witness, your Honor.

A. I did not know it.

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Q. Well in any event he told you he was closing the plant because of the heat and light problem, didn't he?

A. That was one reason he said.

Q. And he told you he was closing because of the sanitary problem, didn't he?

A. He asked us if we had been using the toilets.

Q. And you told him what?

A. I told him yes. Where in the world did he expect us to go to the toilet at?

Q. And you were using them against the express orders of Mr. Smith and Mr. Hunnicutt, weren't you?

A. No; Mr. Hunnicutt might have told Mr. Smith, but he never told us.

Q. Mr. Smith didn't tell you all not to use them?

A. No, he did not tell us not to use it. Mr. Smith

used

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it himself.

Q. You knew that the doors were nailed up out there, didn't you?

A. They were when I went to work there.

Q. And you knew that the sewage was running raw into that box out there, didn't you?

A. I knew that they hadn't covered up the septic tank if that's what you mean.

Q. There wasn't even a tank in, was there?

A. Yes, there was a tank in.

Q. Had the work been completed?

A. I don't know. I didn't go out and inspect it. I'm no health authority.

Q. And it was on that morning that you and Mr. Keffer were terminated. Isn't that correct?

A. That's correct; that's the first we knew of it.

Q. And you also knew back the weekend before that you had been retained there for the purpose of running out the existing stock in Beckley, didn't you?

A. No, we didn't. Mr. Taylor, if it was for that purpose why was the new load of drinks sent in with new material which had never been in the Beckley plant if they were just running out stock?

Q. Then you had another conversation the same day with Mr. Hunnicutt.

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A. I had two different conversations with Mr. Hunnicutt that day.

Q. This is the second one I'm referring to now.

A. Right.

Q. And at that time you were alone with him.

A. That is correct.

Q. And he didn't tell you that the corporation had been dissolved, did he?

A. He told me that as far as I, or any employee of Beckley was concerned, that the Beckley plant was finished.

Q. But he didn't tell you as you said yesterday that that the corporation was dissolved.

A. I don't know whether he used that exact word or not, but those were the terms or the idea which I got from it.

Q. And it was at that time that you offered to put in these lights.

A. That was the second time that I had offered him, yes, sir.

Q. And he refused.

A. He did.

Q. And as a matter of fact in the course of that refusal he asked you if you were a member of the Electrical Union, didn't he, and you told him no.

A. Yes, I believe he did.

Q. And you told him no.

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A. Yes, I believe I did.

Q. And you told him no.

A. I did tell him no.

Q. And he told you, well, he couldn't have you putting in those lights over there, you being a non-union man, with the union trouble he was having at that time, didn't he?

A. That is correct; he told me that, too.

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Q. When were you told that?

A. At different occasions. I can't remember the exact time. Mr. Hunnicutt, I believe, mentioned that he had the boiler there for the Beckley operation at one time. I believe Mrs. Taylor said something about it one time when we was talking about the lights.

Q. But you weren't told that on the 10th of October,

were you?

A. I think one of the men who was standing there told me that -- I asked him what the boiler was for, and I believe he said that was the one that was going to be at Beckley.

Q. Who was the man?

A. I don't know. There was several of them out there. They was cleaning up that day at the Princeton plant, and I don't know their names.

A. And he told you it was for Beckley.

A. He said he thought that's what it was for. It was sitting there, and since I knew that Mr. Hunnicutt had told me he had a boiler, I also assumed that was right.

Q. It never did get to Beckley, did it?

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A. No, it didn't.

Q. You testified yesterday, sir, that your sales had increased since you had gone to work there in May and on to October.

A. That's correct.

Q. Company sales hadn't increased, though, had they, sir?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. I don't know why not.

By Mr. Taylor:

Q. Did --

A. I don't think any employee there had not increased in his sales.

Q. But you hadn't gained back to where you were in May, had you?

A. Well, now, that, I don't know. I didn't -- I wasn't there in May, before the strike. How do I know how much we had to gain back?

I was being able to eat everyday and have at least a piece of meat on my table once a week.

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Q. And you knew that some of the biggest accounts that Pepsi-Cola had over here, it didn't have any more, didn't you?

A. I also know that some of the biggest accounts Pepsi-Cola had, they still had. And that they also got back a lot of the big accounts that they had.

Q. Did they ever get back Kroger?

A. I think so. Yes, sir, I know they did, because I went up there and helped haul the bottles out there.

Q. How about Acme?

A. Yes, sir. And A & P, Carolina Market never quit. That was almost 150 cases a week at one stop.

Q. Did you work the Carolina Market?

A. Yes, I did work Carolina Market. I run three different routes the summer that I was here.

Q. And that was 150 a week.

A. Approximately that, yes. I've put in as many as 95

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at one time there.

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Q. You said there was a new kind of product, or a new line on the trailer that came in over there on the 5th of October.

What was that?

A. New throw-away bottles.

Q. How much?

A. There was either one or two skids. That would have been 64 -- either 32 or 64 cases.

Q. Two skids of them.

A. I'd say one or two.

Q. One or two.

A. I can't be positive on it. It was a new line; it

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was just being introduced.

Q. How many skids?

MR. TAYLOR: Kill that, sir.

By Mr. Taylor:

Q. Were there any more throw-away bottles sent to Beckley the next week?

A. The next week? There was nothing sent to Beckley.

Q. You worked in Beckley the next week, though, didn't you?

A. I worked two days in Beckley.

Q. Did you handle any throw-away bottles?

A. No, sir.

Q. During that week?

A. No, sir. The load that came over on Friday night with throw-away bottles was called back to Princeton. It was never unloaded.

Q. And we haven't used any throw-away bottles over here, had we?

A. We hadn't at the time we closed down.

* * * * *

Q. Let me ask you one further question, or one line of questions:

You testified yesterday that Mrs. Taylor told you that the lights for the Beckley operation had been bought and had been stored in Princeton.

A. That's right.

Q. When did she tell you that?

A. One Saturday when I was over there. I believe it was the first time that I had spoke to Mr. Hunnicutt about putting lights in the Beckley plant.

Q. Was that back in the summer?

A. Yes.

Q. Did she --

A. I don't know exactly when. It was prior to the time that he closed the plant down, yes.

Q. Did she tell you when the lights had been acquired?

A. No, she didn't tell me anything about them. She said that the fixtures had been bought.

Q. She told you this down in Princeton.

A. Yes. One Saturday when I went with Mr. Smith to Beckley -- to Princeton, in the presence of Mr. Hunnicutt, in the office where the three work. I don't know - I think there's two bookkeepers and maybe a

secretary, or something, in there. I don't know what they all do.

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Q. Now, didn't she tell you about this in October, as a matter of fact, about the 1st of October?

A. I told you --

Q. One night.

A. -- I did not know when it was. I know that it was during the daytime when Mr. Smith and I were over there in Princeton. I had ridden with Mr. Smith to Princeton at his request, for no other purpose than just to be going. And Mr. Smith and I had been talking about the lights. Mr. Smith mentioned something to Mr. Hunnicutt about it, and that was when the knowledge of the lights being bought was first brought to my attention. I don't know when it was. It might have been October the 1st, if that was on a Saturday, and up in the middle of the daytime.

Q. It wasn't at night.

A. No, sir.

MR. TAYLOR: No further questions.

TRIAL EXAMINER: Any redirect?

MR. GRAVITT: Yes; just a few.

Redirect Examination.

By Mr. Gravitt:

Q. Mr. Brown, are you studying ministry at the college in Tennessee?

A. I am.

* * * * *

A. (Continued) I am an ordained minister now. I am studying at the present time for a teacher's certificate.

By Mr. Gravitt:

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Q. Now, did you punch a time clock at the plant?

A. I did, at times, yes. There was -- Well, when we first started working we were all on the clock. I can't say - I'd say for two weeks. And then we went on commission. And then there was other times when I worked extra either in the plant, or something like that, which I would punch the time clock for. But on a commission basis, if I was on the route, I did not punch a clock.

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Q. On Saturday, October 6th, you testified that you saw Davis. Was this the first time that you had seen him for a few days, or sometime?

MR. TAYLOR: I object to that question as repetitious, your Honor.

TRIAL EXAMINER: Overruled.

A. I saw him Friday evening when he came after his check, but - and possibly - I know I talked to him in the line, or in the line of conversation that we were having about the Union.

By Mr. Gravitt:

Q. Did he work on Friday?

A. No, sir. I'm almost -- No, I know he didn't. He was sick that day. I'm almost sure he was. Yes, sir, because the only two that worked that day were Kenneth and I and Ronald. I believe that's right - three.

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KYLE CECIL SMITH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Tell the Reporter your full name, and present home address.

THE WITNESS: Kyle Cecil Smith, 130 White Stick Road, Beckley, West Virginia.

Direct Examination

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By Mr. Gravitt:

Q. Did you ever work for the Respondent in this case; did you ever work for Mr. Hunnicutt?

A. Yes, sir.

Q. When were you employed by the Pepsi-Cola Company here in Beckley?

A. July 1st, 1961.

Q. And what was your job at that time, Mr. Smith?

A. Sales Manager.

Q. Sales Manager?

A. Yes, sir.

Q. Have you had any experience in this type work prior to joining Mr. Hunnicutt?

A. Yes, sir.

Q. With whom?

A. Dr. Pepper Bottling Company of Bluefield, Virginia.

Q. Did you leave them to come to Beckley?

A. Yes, sir.

Q. Do you know a Russell Blevins?

A. Yes, sir.

Q. Who is he?

A. Right here (pointing to spectator).

Q. I mean identify him so the Reporter may get it down on the record, Mr. Smith.

A. He was supervisor for Pepsi-Cola Bottling Company

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of Beckley, West Virginia.

Q. Did he work with you?

A. Yes, sir, he worked with me.

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Q. Do you recall Mr. Hunnicutt saying anything about the Union in the meeting on August 29th?

A. Yes, sir.

Q. Now, Mr. Smith, I'd like you just to tell the Trial Examiner here, please, what you recall Mr. Hunnicutt saying

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about the Union.

TRIAL EXAMINER: In order to save time, give us the whole story, not just about the Union. Let's hear the whole story. Let's hear it all at once.

A. To start with, I'll backup a little bit here. The employees of the Pepsi-Cola Bottling Company wanted to talk to Mr. Hunnicutt.

TRIAL EXAMINER: How do you know that?

THE WITNESS: Huh?

TRIAL EXAMINER: How do you know that?

THE WITNESS: Well, it was suggested to me that they'd like to talk to Mr. Hunnicutt before the election come up.

TRIAL EXAMINER: Go ahead.

A. (Continued) And which I suggested it on to Mr.

Hunnicutt.

And at the time I suggested it, Mr. Hunnicutt didn't know whether he could or could not talk to the boys about anything. Later on in the day he called me and told me if they wanted to come to Princeton and talk to him, for me to bring them and come on over there, which I did.

On the night of the meeting - I cannot answer directly whether Mr. Hunnicutt discussed the Union hisself, or whether the boys questioned him about the Union. They merely wanted to find out what was going to happen after this

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election was over with, was the reason or the purpose for the boys going to Princeton and for Mr. Hunnicutt and the men in the meeting to get together on the subject to see what would happen after the election was over with.

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Q. All right, sir. We want you to give us the right answer, and give us the truth.

A. Well, that's what it was. He told me if the Teamsters won the election, to lock the doors and come to Princeton. Now, he didn't say what for.

Q. Did he tell you -- When did he tell you this? Is this the August 29th meeting you're talking about?

A. I don't know, sir.

* * * * *

TRIAL EXAMINER: All right.

By Mr. Gravitt:

Q. Were there any employees present?

A. I don't know, because I don't know exactly when he told it to me.

Q. Did you ever tell the employees that?

A. I don't know that either. I don't know whether I told them that or not.

Q. At this August 29th meeting, did Mr. Hunnicutt say that if the Teamsters won, that the employees wouldn't have a job?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And, then, did he further say that if the Teamsters won, he would lock the doors?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, isn't it true, Mr. Smith, that Mr. Hunnicutt told you on several occasions that if the Teamsters won the election that you were to lock the doors?

A. No, sir, not me.

Q. Do you know of anyone he told?

A. No, sir, I don't know of anybody else that he discussed it with.

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Q. Well, what do you mean, sir, by "No, not me"?

A. I mean he didn't tell me specifically but one time to lock the doors if the Teamsters won.

Q. Can you fix the time of that for us any better than you did just a moment ago?

A. No, sir, I'm sorry, I can't, because I don't really know.

Q. Do you recall Mr. Hunnicutt telling the boys, the employees at the meeting that if they voted the Teamsters out he would give them two-wheelers or buggies for the trucks?

MR. TAYLOR: I object to the question, your Honor. It's been asked in another form, and answered.

TRIAL EXAMINER: I think he has testified on this subject.

MR. GRAVITT: I don't think I asked him this specific question.

TRIAL EXAMINER: I don't know whether you asked him; I think I did.

MR. GRAVITT: With all due respect, sir, I don't recall you asking about the buggies, or the two-wheel-
ers.

TRIAL EXAMINER: I asked him to give the story.

MR. GRAVITT: Yes, sir, you did that. I agree.

TRIAL EXAMINER: I'll overrule the objection.

Repeat the question to the witness.

(Question read.)

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TRIAL EXAMINER: Answer the question.

A. Yes, sir.

By Mr. Gravitt:

Q. He did tell them that; is that your answer?

A. He told them that, yes, sir. But I don't know why. I'll put it like that.

Q. That's all right, sir. You don't have to know why Mr. Hunnicutt did this. You just answer my question.

Do you recall asking any employee, or employees to sign statements that they were for the Union, or wanted the Teamsters to represent them?

A. Yes, sir.

Q. Who did you ask to do that?

A. I believe everybody that was working there.

Q. Do you recall when you did this?

A. Yes, sir.

Q. Well, tell us, please.

A. Saturday morning, the 6th.

Q. That's October the 6th?

A. Saturday morning, October 6.

Q. Did you take this course of action after talking with Mr. Hunnicutt?

A. Yes, sir.

Q. Did Mr. Hunnicutt tell you to do that?

A. Yes, sir.

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Q. Did any of the employees sign statements?

A. Yes, sir.

Q. What did they do with the statements?

A. They give them to me.

Q. Can you tell us approximately what they said in the statements?

* * * * *

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Q. Now, when did you pass the word to Mr. Hunnicutt, sir?

A. Friday the 5th; Friday night.

Q. And you said checking the signatures. Are you talking about the signatures on the application blanks

for the Teamsters?

A. Yes, sir.

Q. Now, directing your attention, sir, to the October 5th date --

TRIAL EXAMINER: Before you go to that.

Do you know what happened to these slips that the boys signed Saturday morning for you?

THE WITNESS: No, sir, I don't.

TRIAL EXAMINER: Did they give them to you?

THE WITNESS: They give them to me, yes, sir; they give them to me.

TRIAL EXAMINER: What did you do with them?

THE WITNESS: That, I don't know. It's been a question in my mind for several days, and I just don't know.

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TRIAL EXAMINER: All right.

Go ahead.

By Mr. Gravitt:

Q. Can you name some of the employees that gave you those statements, sir?

MR. TAYLOR: Your Honor, that question has been asked and has been answered. I object to it as repetitious, your Honor.

TRIAL EXAMINER: Overruled.

A. Well, Jack Brown, Ronald Keffer, Dallas Milam. I don't recall whether all the boys gave me a statement or not. But -- I can't even recall that. But I did have statements.

By Mr. Gravitt:

Q. And did you notice whether the employees signed these statements or not?

A. Yes, sir.

Q. Now, directing your attention to October the 5th, did you have any discussion with Mr. Harris of the Teamsters?

A. Yes, sir.

Q. Well, will you tell us where you had the discussion, and the nature of the discussion, sir?

A. Well, Mr. Harris and I -- I called Mr. Harris to come and go with me to have these signatures verified. And that was the discussion that we had.

He came out, and we took them before a J. P. and

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had them verified.

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A. The nature of the conversation is what I have said. I called Mr. Hunnicutt and told him that Mr. Harris had walked in the plant with the employees and

1891 the United States and Great Britain. And I did not

know that the United States and Great Britain were at war.

1892 the United States and Great Britain were at war.

1893 the United States and Great Britain were at war.

1894 the United States and Great Britain were at war.

1895 the United States and Great Britain were at war.

1896 the United States and Great Britain were at war.

1897 the United States and Great Britain were at war.

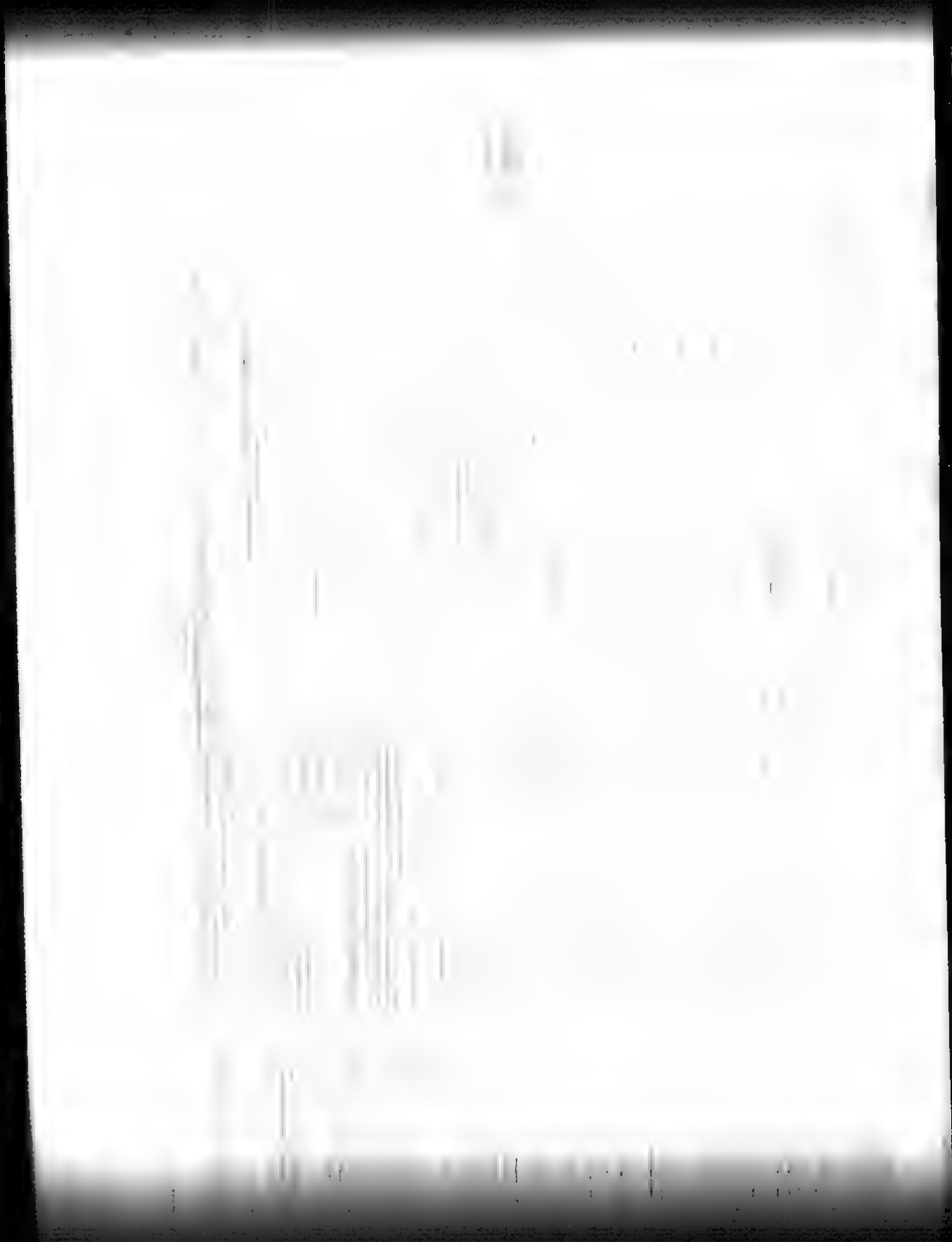
1898 the United States and Great Britain were at war.

1899 the United States and Great Britain were at war.

1900 the United States and Great Britain were at war.

1901 the United States and Great Britain were at war.

1902 the United States and Great Britain were at war.



THE
BANK OF AMERICA
NORTH CAROLINA
CORPORATION

NEW YORK
JAN 1 1901

TO THE
DIRECTORS
OF THE
BANK OF AMERICA
NORTH CAROLINA
CORPORATION

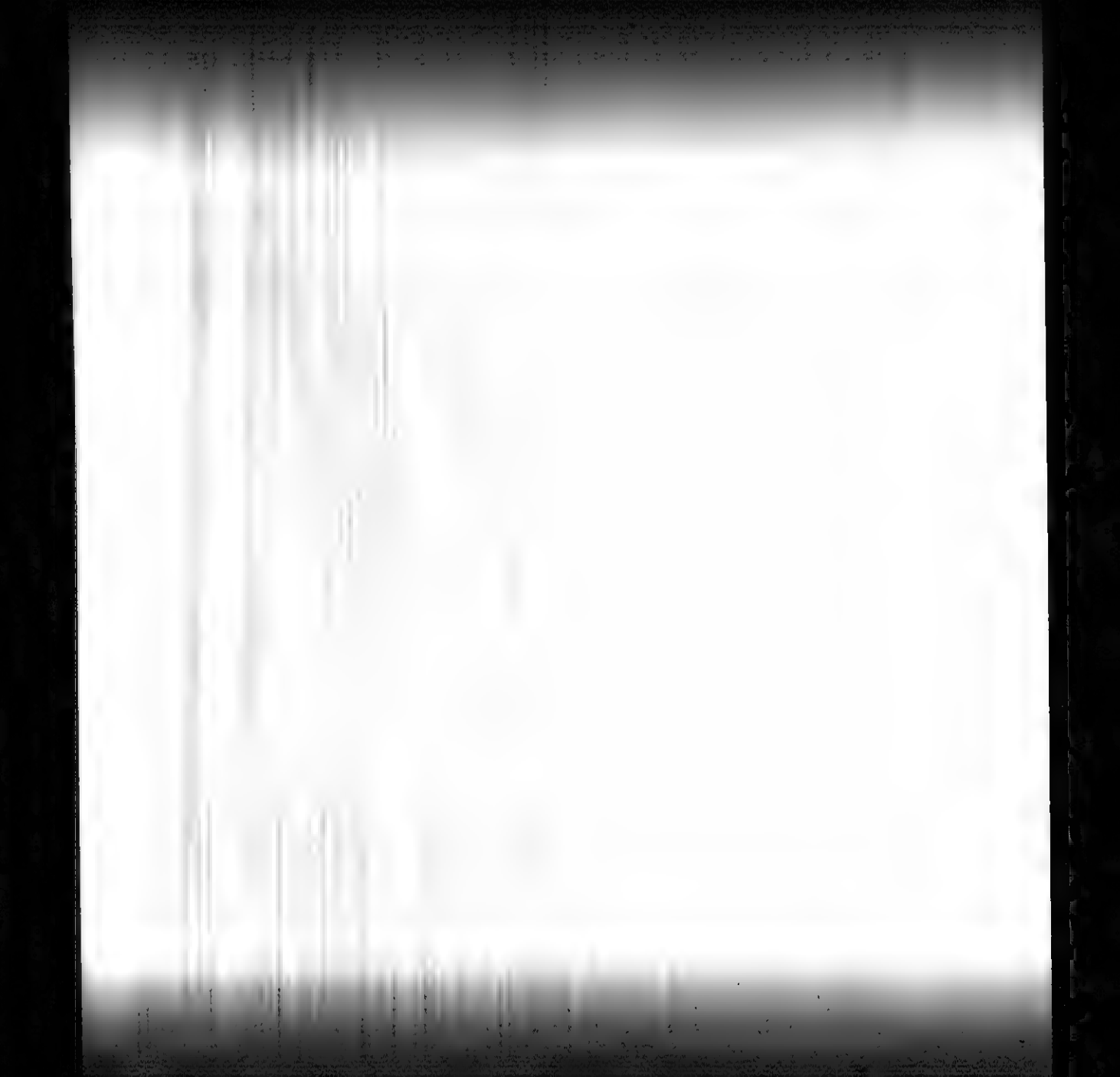
FOR THE YEAR
ENDING
DECEMBER 31
1900

REPORT OF THE
MANAGING BOARD









Q But you did discuss it.

MR. TAYLOR: Your Honor, he's arguing with him. He just said he didn't know whether he did. This is the third time he's asked him.

TRIAL EXAMINER: Yeah. I'll sustain the objection.

MR. GRAVITT: Your Honor he said he didn't know whether he did before or after.

I withdraw the question.

By Mr. Gravitt:

Q. Did, you, Mr. Smith, doubt that the Teamsters represented a majority of the employees there at

that this plant was going to close here in Berkeley.

A. The 10th of October, I believe.

Q. And where were you at that time, sir?

A. In Princeton.

Q. Where in Princeton?

A. Mr. Hunnicutt's office.

Q. Was he present?

A. Yes, sir.

Q. Did he tell you?

A. Yes, sir.

Q. You recall the operation here moving to the new building, don't you?

A. Just a little bit of it. I wasn't here during the time that they moved.

Q. Now, on October 4th, that's the day before you had the discussion about loading the truck again, you know, on the 5th - now, on the 4th, was John Davis on sick leave?

A. Yes, sir, he was.

Q. Now, after the 4th, when was the next time that you saw John Davis?

A. The evening of the 5th.

Q. Did you have any discussion then about his working status with the company?

A. Yes, sir.

Q. What did you say to him?

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A. I told him he was laid off.

Q. And Jack Goad, had he quit shortly before this?

A. Yes, sir. I don't know how long before, but he had quit.

Q. Where did Jimmy Meadows work, Mr. Smith?

A. Jimmy drove the trailer that hauled our drinks

from Princeton to Beckley.

Q. What payroll was he on?

A. He was on the Beckley payroll.

* * * * *

Q. Did he vote in the election?

A. No, sir.

Q. What was the last load of drinks that Meadows made to the Beckley plant, or when was it?

A. That was the evening of Friday, I believe, October the 5th. If I've got my dates right, Friday, October the 5th.

Q. During the early part of October did you register any complaint with Mr. Hunnicutt that you didn't have enough work force to carry on the operations at Beckley?

THE WITNESS: I don't understand his question exactly.

MR. GRAVITT: Yes. I'll clarify it, Mr. Smith.

THE WITNESS: All right, sir.

By Mr. Gravitt:

Q. Did you ever tell Mr. Hunnicutt that you needed more help over here in Beckley?

A. Are you speaking of when we was in full force,

or when we was --

TRIAL EXAMINER: He said early October.

A. (Continued) Early October.

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By Mr. Gravitt:

Q. Yes.

A. No, sir.

Q. Do you recall, Mr. Smith - I mean Mr. Hunicutt telling you to reduce the number of employees, to lay some of them off?

A. Yes, sir, I recall that.

Q. When was that?

A. He had told me a day or two before that he was thinking about it, and he told me the day I done it. That was the end of the payroll period. He told me that day.

Q. What did you tell him about it?

A. Well, I did tell him I didn't think we could handle it.

Q. Why were you of that opinion, Mr. Smith?

A. (No response.)

Q. Do you understand the question?

A. Yes, sir. I understand the question.

I don't know why I was of the opinion except I thought maybe we had a little bit more work than maybe we could do.

Q. Do you know Kenneth Keffer?

A. Yes, sir.

Q. Did you lay him off?

A. Yes, sir.

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Q. Do you recall when?

A. Yes, sir. Friday afternoon, the 5th, I believe.

Q. What did you tell him?

A. Kenny was laid off because of his age, and because of the insurance company.

Q. Did you tell him that?

A. I did. Yes, sir, I did.

* * * * *

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Q. You saw him on Saturday?

A. Now, let me change it. I either paid him, or give it to Ronald to take home to him. That's his brother. I don't know whether I saw Kenny on Saturday or not. He was getting married that day. I might have not.

Q. Mr. Smith, do you know Mr. Wardenski?

A. Yes.

Q. Did he work for you here in Beckley?

A. Yes, sir.

Q. When was he -- What was his last day of employment with the company?

A. The 4th

Q. October, you're referring to?

A. October the 4th, yes, sir.

Q. Do you know Billy Lukach?

A. Yes, sir.

Q. Did you lay him off?

A. Yes, sir.

Q. When?

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A. October the 4th.

Q. Did you tell him anything about coming back to work?

A. Yes, sir.

Q. What did you tell him?

A. Well, we told him we hoped to get it straightened out and he could get back to work.

Q. Did you lay off Dallas Milam?

A. Yes, sir.

Q. When?

A. October 4th.

Q. What did you tell him, Mr. Smith?

MR. TAYLOR: I object to the question, your Honor, It assumes that he told him something.

TRIAL EXAMINER: Overruled.

Answer the question.

THE WITNESS: Sir?

TRIAL EXAMINER: Answer the question.

A. I told him the same thing, we hoped to get straightened out so we could put him back to work.

By Mr. Gravitt:

Q. Did you tell John Davis the same thing?

MR. TAYLOR: Your Honor, I do object to that question. We went into that this morning at great length. He said he doesn't recall telling Mr. Davis anything.

TRIAL EXAMINER: Overruled.

Answer the question.

By Mr. Gravitt:

Q. You may answer, Mr. Smith?

A. I don't know what I told him. I didn't get him until the next day.

Q. The 5th?

A. Yes, sir. He didn't work. He come after his payday. He was on sick leave.

Q. Did you ever tell him that he was laid off at anytime?

A. I told him he was laid off, yes, sir.

Q. Was it after he came back and picked up his check?

A. It was Friday, the 5th.

Q. Did you tell him anything about working there again, Mr. Smith?

A. I don't know, sir.

* * * * *

Q. Were you interested in increasing the sales in this area, Mr. Smith?

A. Yes, sir.

Q. Why were you?

A. It was my job.

MR. TAYLOR: Object.

TRIAL EXAMINER: Overruled.

A. (Continued) It was my job.

By Mr. Gravitt:

Q. Now, from the time that you joined the company until, say May, 1962, were the sales increasing?

A. Yes, sir.

* * * * *

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How many vending machines did you put in after you came to work for the Respondent?

A. I don't know how many.

TRIAL EXAMINER: Could you make any estimate?

THE WITNESS: I don't know. I'd say about forty, maybe.

By Mr. Gravitt:

Q. Were these new machines?

A. Yes, sir.

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Q. Were there any in operation before you joined the company here in Beckley in this area?

A. Yes, sir.

Q. About how many?

A. That, I couldn't tell you, sir. Quite a few.

Q. Did you have additional machines installed?

MR. TAYLOR: Objection; repetitions.

TRIAL EXAMINER: Overruled.

Answer the question.

By Mr. Gravitt:

Q. You may answer, sir.

A. Yes, sir.

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TRIAL EXAMINER: Are you still working for the

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Respondent: --

THE WITNESS: Yes, sir.

TRIAL EXAMINER: -- Company in this case?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Go ahead.

By Mr. Gravitt:

Q. To your knowledge, Mr. Smith, were any of the individuals working at Beckley -- at Princeton -- correct that, please -- on the Beckley payroll?

MR. TAYLOR: Objection, your Honor. It's an unclear question. At least it's unclear to Counsel. I don't know whether it's clear to the witness or not.

TRIAL EXAMINER: Overrule .

Answer the question.

A. Yes, sir.

By Mr. Gravitt:

Q. About how many, sir?

A. Well, Mrs. Taylor was there as bookkeeper. That's the only one I can be sure of.

Q. Do you know how much time she spent on Beckley bookkeeping?

MR. TAYLOR: Your Honor, that's irrelevant. No issue here about Mrs. Taylor's activities.

TRIAL EXAMINER: Overrule .

Answer the question.

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By Mr. Gravitt:

Q. You may answer, sir.

A. I don't know how much time she spent, no, sir. She worked in the office all the time.

Q. Of the employees that you laid off here during the early part of October, did you give them any proper notice, Mr. Smith?

A. No, sir.

Q. Have you ever laid off or discharged any employees before?

A. Yes, sir.

Q. Did you ever give them notice?

A. No, sir; not that one.

Q. Which one are you talking about, sir?

A. Bill Harrah.

Q. Did you ever give notice to any employee prior to layoff or discharge?

A. No, sir.

* * * * *

Q. Did you have any heat there in the building, Mr. Smith?

A. Yes.

Q. Did they have any heat in the building there?

A. No.

Q. Any type of heat?

A. There was some oil burners; salamanders they call them.

Q. Did they have some of those sitting out in the warehouse?

A. We did, yes, sir; we did then.

Q. Did you have some in the office?

A. (No response.)

Q. Some, or any?

A. One

Q. One.

A. Yes, sir.

Q. How many did you have out in the warehouse?

A. I believe two is all we had altogether; one out there and one inside.

* * * * *

Q. Did he ever make any offer to you to assist or improve the lighting facilities there?

A. He just asked me if I thought maybe Mr. Hunnicutt might let him do it at nighttime, put the electricity in. I don't mean put it in the building - do some wiring, do some of the wiring of a nighttime.

* * * * *

Q. On October 1st how many routes were you operating out of this plant?

A. Five.

Q. How many were you operating on May 1st, 1962, Mr. Smith?

A. Five.

Q. How many operated in January of '62?

A. Five.

* * * * *

Q. Is it your testimony, sir, that you and Mr. Blevins did the work that had formerly been done by five drivers operating in this area?

A. No, sir. Because we've had some other help.

Q. Tell us about the other help, what it is, and from what source it came.

A. Well, we've had - we've got some more boys helping us, or men helping us work this territory here.

Q. Who are they?

A. Mr. Holly Tabor - Holly Shrewsbury is one of them.

Q. As you tell us who they are, tell us where they're from, too, sir, so we've got it all in the record.

A. Well, he's from Princeton.

I can't answer any more of them, because I don't know.

Q. How many more are there?

A. I don't really know. One or two or three or -- I don't really know which ones they are.

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Q. After October 10th did you service this area with Pepsi-Cola products?

MR. TAYLOR: Objection; repetitive.

TRIAL EXAMINER: Overruled.

A. Did we service the area?

By Mr. Gravitt:

Q. Yeah. Are you distributing Pepsi-Cola products in this Beckley area?

A. Yes, sir.

Q. How do you distribute them? Just describe it, please.

A. We distribute it from - just like anybody else, from a soft drink truck.

Q. Yes, sir. Where do you load the truck?

A. Princeton.

Q. Do you drive it over here?

A. Yes, sir.

Q. And after you service the customers in this area, do you drive it back to Princeton?

A. Yes, sir.

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Q. Do you leave the truck in Princeton?

A. Yes, sir.

Q. How do you get back to Beckley, If you come?

A. We come back in a pickup, Pepsi-Cola pickup.

Q. "We", who are you referring to?

A. Mr. Blevins and myself.

Q. Do you use this pickup truck to get to work in the morning?

A. Yes, sir.

Q. You drive it to Princeton?

A. Yes, sir.

Q. Is this process still going on when you work?

A. Yes, sir.

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Q. Did you have a restroom there?

A. Yes, sir.

Q. Did the employees use it?

A. Yes, sir.

Q. Did you ever use it?

A. Yes, sir.

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Q. Did it ever overflow, backup, the plumbing?

A. No; but we was under instructions not to use it. We was.

Q. How long did you use it? The period of time.

A. I don't know, sir.

Q. Was there ever a time that you didn't use it when you were occupying the building?

A. Yes, sir, I believe there was.

Q. When?

A. Just for awhile before they got the stuff put in there, the commode and the sink put in there.

Q. But then it was later installed. Is that correct, sir?

A. Yes, sir.

Q. Did you ever refuse to work at the plant during this labor problem?

A. Did I ever what, sir?

Q. Refuse to work at the plant during this labor problem.

A. No, sir; I never refused to work.

Q. Other than strikers, do you know of anyone else who refused?

A. Yes, sir. I believe Mr. Cade refused to work, I believe, the day it happened.

Q. The day what happened?

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A. The day of -- May the 15th. Mr. Cade was there to work, and he picked up his tools and went home.

Q. Do you know of anyone else other than Cade

A. Mr. Phillips.

Q. Who is Mr. Phillips, sir?

A. He is a plumber.

TRIAL EXAMINER: What was Cade?

THE WITNESS: Cade is a carpenter.

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Q. Is this the day he told you he was closing the plant?

A. Yes, sir.

* * * * *

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Cross Examination

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By Mr. Taylor:

Q. What employees were present at that meeting?

A. Everybody that was working there at the time was present at the meeting, including Russell and myself.

Q. Did the employees tell you why they wanted to meet with Mr. Hunnicutt?

A. Yeah.

Q. All right, sir. What did they tell you?

A. They wanted to know -- Well, I'd say they wanted to know the answers to two questions. What was going to happen to them if the Teamsters won; and what they was going to get to work with if the Teamsters didn't win.

In other words, they wanted to know what was going to happen to them after the election was over.

Q. They also wanted to go over there and discuss general working conditions, didn't they?

A. Yes, sir.

Q. And they did discuss them in that meeting that evening, didn't they?

A. Yes, sir.

Q. In particular, after the meeting began, the

question was asked of Mr. Hunnicutt why weren't the Mine Workers on the ballot. Isn't that right?

A. Sir, I don't know.

Q. The boys asked what could be done to improve the sales situation, and the working conditions over there, didn't they, sir.

A. They did, sir.

Q. And did they get an answer?

A. Yes, sir, they did.

Q. And they asked in particular about buggies, didn't they?

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A. They did.

Q. And they were told, weren't they, that if they continued to work there, buggies were needed there, that he'd see about getting the buggies. Isn't that right?

A. That's right.

Q. They asked about advertising, didn't they?

A. They did, sir.

Q. And in response to that question Mr. Hunnicutt got the advertising budget and brought it out to the meeting, didn't he?

A. I can't remember, but he did tell them he would get them some advertising.

Q. Do you recall, sir, on that night whether the precise question of what would happen to these employees if the Teamsters won the election was put to Mr. Hunnicutt?

A. Yes, sir, it was.

Q. Do you recall his answer?

A. Yeah.

Q. What --

A. Yes, sir.

Q. What did he say?

A. He told them that they would no longer have a job there.

Q. Did he tell them why?

A. Well, he -- Yes, sir, I'd say he did. I'm pretty sure he did.

Q. And it was because of these other strikers --

A. That's right. It was automatic. That's the reason. It would have been automatic if they would have won, they wouldn't have had a job.

Q. As a matter of fact, they knew it and indicated to you they knew it before they ever went to the meeting, isn't that right?

A. Certainly.

Q. Your testimony is that you discharged or laid off a number of employees in October, 1962, and that you did so without notice to them.

Did you discuss these questions with anyone prior to the day or days that you laid any of these employees off or discharged them?

A. Yes, sir.

Q. With whom did you discuss it?

A. I discussed it with Mr. Hunnicutt.

Q. Do you remember the first -- excuse me, sir. How many times?

A. I believe just one time.

Q. Was that along about the 1st or 2nd of October?

A. Yes, sir.

Q. And was it in a conference that you had with him or was it over the telephone?

A. We talked about it in his office.

Q. In his office.

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A. Yes, sir.

Q. And this was several days before you began laying these people off. Is that right?

A. Yeah.

Q. Is that right?

A. Yes, sir.

Q. This conference in the office pertained to Kenneth Keffer, did it not?

A. Not this one, no, sir.

Q. What did this one pertain to?

A. It was a very short one. I know that Mr. Hunnicutt did indicate to me that he was thinking about laying some of the employees off. Now, this was two or three days, or four, three or four days before it happened, but he indicated to me that he was thinking seriously about laying some of them off at Beckley.

Q. He didn't talk to you about Kenneth Keffer before you laid Mr. Keffer off?

A. Yes, sir, he did. But it was even before that.

Q. And that was about the insurance program.

A. Right.

Q. And as a result of the accident which Mr. Keffer had been involved in.

A. Yes, sir.

Q. He told you that his insurance people had told him

that he couldn't work Mr. Keffer any more because of

his age, didn't he?

A. Yeah.

Q. As a matter of fact, he couldn't work anyone under 21.

A. That's right.

Q. And he told you to take care of that, didn't he?

A. Yes, sir, he did.

Q. And as a matter of fact you did take care of it, but you didn't do it until five or six or seven days later.

A. Yeah; that's right.

Q. Okay. Now, did he discuss with you the discharge of Davis and Wardenski and Jackson Brown and Dallas Milam?

A. He didn't particularly discuss any names.

Q. Did he discuss, then, the discharge of the employees generally?

A. That's right; that's right.

Q. And he told you, didn't he, to let them go as of the end of the pay period on October 4, 1962?

A. Yes, sir.

Q. Didn't he?

A. Yes, sir.

Q. And he made a couple of exceptions, didn't he, to that? He told you that you could keep a couple?

A. Oh, yeah.

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Q. Of your choice.

A. That's right. He didn't name anybody. That was my choice.

Q. And this was on the telephone, wasn't it?

A. Yes, sir.

Q. And he told you to keep those of your choice to run out the stock, didn't he, or do you remember?

A. He told me to keep two of my choice.

Q. He did not tell you, then, to run out the stock, or do you remember?

A. I do not remember.

Q. And you did keep two, didn't you?

A. Yes, sir.

Q. And they were Jackson Brown and Ronald Keff-fer.

A. Yes, sir.

Q. And that was on the 4th of October.

A. (No response.)

Q. Isn't that right?

A. Yes, sir; I kept them on the 4th of October.

Q. And you let the rest of them go, except for Kenneth Keffer.

A. That's right; except for Kenny.

Q. And you let Kenneth Keffer go the next day.

A. Right.

Q. And you let him go before you had any knowledge of

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his joining any union didn't you?

A. Who's that?

Q. Kenneth Keffer.

A. I don't know, sir. I know that he worked that day.

Q. As a matter of fact they were all gathered out there that evening, Friday evening, because they thought the payroll was coming over.

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By Mr. Taylor:

A. As a matter of fact when you testified this morning that you didn't doubt that the Teamsters represented a majority of your employees, you didn't know what a majority of your employees was, did you?

A. I would like to add this to it: all the boys was with Mr. Harris, and they also told me that they belonged to the Union, so there wasn't much of a doubt that they had signed up in my mind at the present. They was all right there with him.

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Q. During the time that the corporation operated from its Beckley warehouse, were the plumbing facilities, the sanitary facilities, ever completed?

A. No, sir.

Q. To your knowledge, are they complete now?

A. No, sir.

Q. Have any lights been placed in the Beckley warehouse while you've been associated with the company, out in the warehouse proper?

A. While I've been associated with the company. Yes, sir.

Q. What kind of lights?

A. Well, they're almost like an extension cord stretched from one end of the building to the other, and back, and bulbs screwed in them.

Q. Nothing like this up here - fluorescent?

A. No, sir.

Q. Who put that extension cord in there? Did you all do that yourselves?

A. I don't know, sir; I wasn't there when it was put up.

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Q. Had lights been put in, or that extension cord system been put in by the man that poured the concrete, or do you know?

A. I say I wasn't here when the concrete was poured or the lights put in. I don't know.

Q. All right.

A. It probably was.

Q. You've been in the bottling business, working around bottling plants for sometime, haven't you, sir?

A. Yes, sir.

Q. Was the lighting system used in the Beckley warehouse ever adequate while you were there?

A. No, sir.

Q. As a matter of fact you relied on the long days in the spring and the summer to get your work done, didn't you sir?

A. Yes, sir.

Q. And in September and October of 1962 it was getting harder and harder to get a day's work in. Isn't that right?

A. Yes, sir, it was getting hard.

Q. Tell us about the heating facilities. Were there any beyond those salamanders?

A. No, sir.

Q. You have to have heat in warehouses to store drinks, don't you?

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A. Yes, sir.

Q. You have to have some heat, regardless of the weather, don't you, to maintain a temperature in the building?

A. Well, yes and no. In the middle of the summertime you don't, but you need heat.

Q. Have you been around Beckley very long?

A. Since July, '61.

Q. And the nip comes into the air pretty early in the fall, pretty early in the year, doesn't it?

A. It gets cold.

Q. And whether it does or doesn't with respect to early in the fall, you couldn't have worked in there in November and December of 1962, or even now, without any heat, could you?

A. No, sir, you couldn't.

Q. You couldn't work in there without any lights, could you?

A. No, you couldn't work without lights.

Q. And except for the fact that the rest of the employees were violating the orders about the sanitary

facilities, you couldn't work out there without those, could you?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. Answer?

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TRIAL EXAMINER: Answer the question.

A. (Continued) No, sir, not much longer we couldn't have worked out there.

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By Mr. Taylor:

Q. Have you knowledge of any efforts on the part of the company during the spring and summer of 1962 to take care of the heating, lighting, and sanitary facility problem at the plant?

A. Do I have any knowledge of it?

Q. Do you know of any efforts that were made by the company to get that done, or by Mr. Hunnicutt?

A. The only thing I know, he said he had to ask Mr. Phillips to put the plumbing in, and I believe he said he had contacted Lowe Brothers Electric Company about the electricity.

Q. Did he tell you what the result of that contact was?

A. He told me that Mr. Phillips refused to put the plumbing in after the strike started; that Lowe Brothers, I don't know.

MR. GRAVITT: I object to his question about what Mr. Hunnicutt told this man that Mr. Phillips told him on the ground that it's hearsay, and I ask that the answer be stricken from the record.

TRIAL EXAMINER: Overruled.

By Mr. Taylor:

Q. I. B. Cade is a contractor down in Princeton some, isn't he?

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A. Some, yes, sir.

Q. And he was working out at the warehouse on the 15th of May, 1962, wasn't he?

A. Yes, sir.

Q. He was working on the cesspool, wasn't he?

A. Right.

Q. And he picked up his tools and went home that day when the dispute began, didn't he?

A. Yes, sir.

Q. And he hasn't been back yet, has he?

A. No, sir.

Q. There's been testimony here that after the first

dispute in May, or the dispute in May, 1962, that the warehouse in Beckley was shut down. Was it or wasn't it?

A. We closed it for a few days, yes, sir.

Q. Did you do it on that day, or did you work out of Beckley for a couple of days after the dispute began?

A. We didn't work out of Beckley after the dispute began.

Q. When did you start hiring replacements over here?

A. May 15th.

Q. These replacements that were hired in May, did they work for the company?

A. Yes, sir.

* * * * *

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Redirect Examination:

By Mr. Gravitt:

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Q. How many light bulbs did you have burning, could you use out in the warehouse?

A. You want approximately?

Q. Yes.

A. About six, I have an idea.

* * * * *

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Q. Did you convey this to the replacements?

A. Yes, sir, they knew that.

Q. I say did you convey it to them, sir?

A. Yes, sir.

Q. When?

A. Sir, these boys knew all along that if the Union won they wouldn't have a job from the day that they come to work there.

Q. Now, Mr. Smith, with all due respect, sir, I want you to tell me what you told them, if you will, please.

A. Just that when they come to work, they come to work with the understanding that if the Teamsters won the election they wouldn't be working there any longer. That was just as

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plain as I could tell it to them.

Q. Did you tell them this before the election?

A. Yes, sir.

TRIAL EXAMINER: Did you tell them this when they came to work?

THE WITNESS: Yes.

* * * * *

RUSSELL BLEVINS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give the Reporter your full name and present home address.

THE WITNESS: Russell Blevens, 112 Patton Drive, Beckley, West Virginia.

Direct Examination:

By Mr. Gravitt:

Q. When did you begin working for the Pepsi-Cola Company here in Beckley, Mr. Blevins?

A. About the middle of July, 1961.

Q. Who hired you?

A. Kyle C. Smith

Q. And what were your duties, sir?

A. I was route supervisor.

Q. How many routes did you supervise?

A. Five.

* * * * *

Q. Prior to, say October 5th, 1962, did you know

anything about the plant closing down?

A. No, sir.

Q. Did Mr. Hunnicutt or Mr. Smith ever tell you that it was going to close down before that time?

A. No, sir.

* * * * *

Q. Well, let's -- Let me put the question this way: Now, did Mr. Hunnicutt say anything about things the employees would get if the Teamsters did not get in?

A. Yes, sir.

Q. Well, what was it, sir?

A. He told them if they needed two-wheel buggies, that he would get them; and that if they needed some advertisement over here, that he would help them with it; and that he would do anything he could to help them increase their payday for them.

Q. Now, Mr. Blevins, do you recall Mr. Hunnicutt saying anything about what would happen if the Teamsters did get in the plant?

A. He said that if the Teamsters got in the plant that they would be without a job.

* * * * *

Q. Now, during this first part of October, Mr.

Blevins, had the routes built back up over and above what they were, say from the middle of May to the last of May?

A. Of 1962?

Q. Yes, sir.

A. They had built up some, yes.

* * * * *

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Q. Did you have any drinks to freeze in the warehouse while you were there, Mr. Blevins?

A. No, sir.

Q. Do you recall Mr. Meadows bringing the trailer over at various times to the warehouse here loaded with drinks?

A. He did bring them over, yes, sir.

Q. To your knowledge, when did he stop bringing them over?

A. The day that the last bunch of boys out there said that they was signed up with the Teamsters Union.

* * * * *

Q. Did you use the toilet facilities there?

A. Yes, sir.

Q. Did the other employees use them?

A. Yes, sir.

Q. Was there any overflow or backing up in the
466
building?

A. Well, no, sir, but there was an odor on the outside.

Q. Did anyone ever tell you not to use the toilet?

A. Yes, sir.

Q. Who?

A. Mr. Hunnicutt.

Q. When did he tell you that?

A. Just after that he had them fixed in out there. I don't know the date.

Q. Was that sometime after the middle of May that he told you not to use them?

MR. TAYLOR: Your Honor, I object to the question. He answered it.

TRIAL EXAMINER: Overruled.

A. I don't remember.

By Mr. Gravitt:

Q. There has been testimony here about after this labor dispute started in the Middle of May, or sometime, that Mr. Hunnicutt nailed the door to on the restroom.

Q. Do you recall using the restroom after that time?

A. After May the 15th?

Q. Yes, sir.

A. Yes, sir, I did.

Q. And how long did you use it, over a period of time, sir?

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A. Up until the time that we began operating out of the Princeton plant.

Q. That was around October 10th?

A. Somewheres along in there.

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Q. Did he say anything about closing down the plant?

MR. TAYLOR: Your Honor, I object to that question. He answered it.

TRIAL EXAMINER: Overruled.

A. Yes, sir. He said that he was going to begin operating Beckley out of that plant for the time being.

By Mr. Gravitt:

Q. Was this the first time you had heard of such a change?

A. That's the first I had heard of it.

* * * * *

By Mr. Zazzali:

Q. Aside from the meetings that Mr. Hunnicutt and you have just testified about, did you ever discuss the Union -- a union with Mr. Hunnicutt?

A. Any particular one?

Q. Any.

A. Well, not any particular one, no, sir.

Q. Well, did you ever discuss unions?

A. Yes, sir.

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Q. When?

A. On Sunday, sometime in September.

Q. Where?

A. Over at Princeton, at his office.

Q. Who was there?

A. Mr. Hunnicutt, Mr. and Mrs. Taylor, and Pete Smith.

Q. What did you say to Mr. Hunnicutt?

A. Well, Pete and I was talking to him, and he wanted to know how that we could increase the business over here in Raleigh County any, and at that time we was not in Kroger's, Acme's or A & P's, and we told

him that the only way we could increase the business right then was to sign up with some union.

Q. What did Mr. Hunnicutt say to you, if anything?

A. He didn't say nothing right then.

Q. Did anyone else say anything at the time?

A. Yes, sir.

Q. Who?

A. Mrs. Taylor spoke up.

Q. What did she say?

A. Well --

Q. and to whom did she say it?

A. Well, she was just talking to all of us in particular, and she said that we couldn't go Union over here in Raleigh County because they wouldn't let us haul non-union

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drinks from Princeton to Beckley.

Q. Did Mr. Hunnicutt then say anything?

A. Well, he said he couldn't go union now.

* * * * *

Cross-Examination

By Mr. Taylor:

* * * * *

Q. He didn't tell them he was going to lock the doors there that night, did he?

A. Well, he said that he wouldn't operate under their conditions.

* * * * *

Q. In September and during the first week of October, 1962 did you sell as much as you did during the end of May, say from the 15th on to the end of May and in June, 1962?

A. Yes, sir.

Q. You had built back up to about even with that?

A. Yes, sir.

* * * * *

Q. And you'd take the boards down and use them anyway, wouldn't you?

A. Yes, sir.

* * * * *

Q. Okay. Now, this Sunday meeting in September that you testified about in response to Mr. Zazzali's question occurred along towards the end of the month, didn't it?

A. It either occurred after September the 24th --

Q. Sometime between September the 24th and September 30th, 1962.

A. Somewhere along in there.

Q. While you were over there discussing - you were discussing Kenneth Keffer and the insurance program, weren't you?

A. That was the reason for being over there.

Q. And that was when Mr. Hunnicutt told you to - or told Mr. Smith to let Mr. Keffer go, wasn't it?

A. That's the day that he said he was going to - to do something about it, yes.

* * * * *

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Q. And it was at this meeting that Mr. Hunnicutt asked about getting the business increased, and whether they could.

A. Right.

Q. And you all talked, said it was your thought that signing up with some union was the answer.

A. Yes, sir.

Q. And that's when Mrs. Taylor said we couldn't do that because of hauling the non-union drinks over here from Princeton to Beckley.

A. Yes, sir.

* * * * *

MR. GRAVITT: Ronald Keffer.

RONALD RAY KEFFER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Tell the Reporter your full name and present home address.

THE WITNESS: Ronald Ray Keffer, 113 Mercer Street, Beckley, West Virginia.

Direct Examination:

By Mr. Gravitt:

Q. How long have you worked for the Pepsi-Cola Bottling Company here in Beckley, Mr. Keffer?

A. Approximately around four years.

Q. Has this been a continuous period of service, or was it broken?

A. What do you mean about that?

Q. Were you hired around 1958 or '9?

A. Yes.

Q. And did you work here all the time since then?

A. No, sir; I worked in '58, I worked through the

summer; and in '59 I worked through the summer; and then around '60 I started on regular.

Q. After the beginning of '60, have you worked up until October the 10th.

A. Yes; uh huh.

* * * * *

Q. Did you move any heating units from the old building to the new building?

A. Yes, sir. You're talking about the heaters.

Q. About how many did you move?

A. Three.

Q. What type heaters were they, Mr. Keffer?

A. Gas heaters.

Q. Had you been using them at the old location?

A. Yes, uh huh.

Q. Were they in the new plant, in the building, say from October - the first part of October?

A. Yes, they was in there.

Q. Did you see them, sir?

A. They was in - on the lefthand side of the plant.

Q. Inside the building?

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A. Yes.

Q. How do you know that these heaters that you have been talking about were the heaters that were in the old plant, sir?

A. Because I helped take them down and hauled them out there.

Q. After you got into the new plant, did you ever work after dark?

A. Yes.

Q. And did you have lighting?

A. Yes, we had strung up, just temporary; not like the flourescents there.

Q. Were you able to see how to perform your duties there?

A. Yes, sir.

Q. Did you perform your duties?

A. Yes.

Q. Now, did you actually have any type heat in the building.

A. What do you mean about that?

Q. Did you have any stove, or anything that gave

off any heat?

A. We had salamanders.

TRIAL EXAMINER: These three heaters that you moved from the old building, do you know whether they were connected

485-A

up?

THE WITNESS: No, they weren't.

TRIAL EXAMINER: Never connected?

THE WITNESS: No.

TRIAL EXAMINER: All right.

Go ahead.

By Mr. Gravitt:

Q. Did you have any drinks to freeze in the new building, sir?

A. No; not while I was there.

TRIAL EXAMINER: And how long were you there?

THE WITNESS: We started to run drinks out of there around, approximately around April.

TRIAL EXAMINER: Of '62?

THE WITNESS: Yes; uh huh.

TRIAL EXAMINER: And when was the last time

you ran drinks out of there?

THE WITNESS: The last time was October the 9th.

TRIAL EXAMINER: I see.

THE WITNESS: That was the last time I --

TRIAL EXAMINER: Do you remember any freezing weather before October the 9th?

THE WITNESS: No, sir.

TRIAL EXAMINER: Did it come after?

THE WITNESS: Yes.

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TRIAL EXAMINER: Did you have freezing weather after --

THE WITNESS: October 9th? Yes, sir.

TRIAL EXAMINER: Last year?

THE WITNESS: You mean in '60?

TRIAL EXAMINER: In '62. The beginning of this last winter. Do you remember when freezing weather set in, if there was any?

THE WITNESS: There wasn't none right around October.

TRIAL EXAMINER: Was there some later?

THE WITNESS: Later on, approximately around

November, but not in October.

TRIAL EXAMINER: How about December?

THE WITNESS: Yes.

TRIAL EXAMINER: All right.

By Mr. Gravitt:

Q. Did you use the restroom facilities there at the plant?

A. Yes, sir.

Q. Did anyone tell you not to use them.

A. No.

Q. As far as you know, sir, was there any trouble in using them, like overflowing or backing up or out of order?

A. As far as I know, there weren't.

Q. Did you sign a union card?

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A. Yes.

Q. When did you sign it?

A. October the 5th, Friday, approximately around 6:30.

Q. Did you sign a statement stating that you had signed up for the Teamsters Union?

A. Yes; uh huh.

Q. Who asked you to sign the statement?

A. Pete Smith. He asked me to fill one out.

Q. And did you fill one out?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir.

Q. What did you do with it?

A. I handed it to Pete Smith. Him and -- I presume him and Harris took it up to Rodriguez.

Q. Can you recall any of the words you used on this statement that you signed?

A. Well, I can't -- I can't remember the whole thing, but I can give you just a little of it.

Q. All right. Tell us what you recall, sir.

A. It was verifying that "I have signed up with the Teamsters 175".

Q. Did you see Mr. Brown sign a statement?

A. Yes.

Q. Did he help you in preparing your statement?

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A. Yes, he did.

Q. Was your statement practically the same as Brown's?

A. (Witness nodded head in affirmative.)

TRIAL EXAMINER: Don't nod your head. You're supposed to say yes or no.

A. (Continued) Yes, sir.

By Mr. Gravitt:

Q. Did you go to the August 29th meeting in Princeton?

A. Yes, sir.

* * * * *

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A. Yes, he was.

Q. Now, will you tell the Trial Examiner, please, what was said on this occasion, as best as you can recall now?

A. We all went in and had a seat, and Hunnicutt said that if we didn't vote those damn thugs out that that he was going to lock the doors; and that he said that if there was - if they was voted out, that he was going to come over and increase the sales, and help us on the uniforms, and get us new buggies, and advertisement, and fix up the trucks.

Q. Do you recall him using the words "lock the doors"?

A. Yes.

* * * * *

Q. Did you hear Mr. Harris say anything about signing up employees?

A. Yes; he told Pete that he had done signed us all up.

Q. Did you hear Mr. Smith make any remark?

A. He said to wait there until he called Hunnicutt.

Q. What time did you leave the plant on that day, approximately?

A. Approximately from 6:45 to 7:00.

Q. Did you ask him anything about working, when to work again?

A. Yes.

Q. What did you ask him?

A. I asked him if he wanted me to report for work tomorrow. He said yes, as usual.

Q. And did you report the next day as usual?

A. Yes. At 7:00 o'clock, the usual time.

Q. Did you see Mr. Smith on this occasion?

A. Yes.

Q. Did you have any discussion with him?

A. Yes; I asked him --

Q. What happened?

A. I asked him if he wanted me to go ahead and punch in. He said, no, he'd have to ask Hunnicutt first.

Q. Was Mr. Hunnicutt there?

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A. No, he wasn't there at the plant.

Q. Well, did he ever give you an answer about whether to work or not?

Q. It was quite sometime after that he gave me the answer. He had talked to Hunnicutt approximately one, two, three - I don't know how many times - and just before him and Harris went to Joe Rodriguez to have those statements verified.

Q. Did he ever tell you to punch in?

A. Yes; as they was getting ready to leave to go to Joe Rodriguez.

Q. Did you punch in?

A. I asked him about me punching in. He said, "Go ahead."

Q. Did you punch in?

A. Yes, I did.

Q. What did you do that day; what kind of work did you do, if anything?

A. After I had punched in I started to cleaning up the plant, the warehouse, the office. And there was a truck or so there that needed some more drinks on it. I put it on them. And after Pete come back I went to delivering soft drinks uptown.

Q. You mentioned Mr. Smith going to Rodriguez with Harris. Did you ever see -- Did you see Smith after they

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returned to the warehouse?

A. Yes. Smith returned into the warehouse, and I told him I was going ahead uptown and deliver those drinks. And he said, "Go ahead."

Q. Did you see Smith after you returned from delivering the drinks uptown?

A. Yes, I did.

Q. Did you have any discussion with him about your brother Ken Keffer?

A. Yes.

Q. Tell us about that discussion, sir.

A. After I returned from uptown Pete and I had a discussion. He said that Hunnicutt had called, or he had called Hunnicutt - I don't just remember how that went - that Ken was cut off on account of the wreck.

Q. What wreck was he referring to?

A. The wreck that he had on July the 3rd, 1962, on the turnpike.

Q. And had your brother worked since the wreck up until that time?

A. Yes.

Q. The time you're talking to Smith, I'm referring to, now.

A. Well, he didn't work that day; he worked the day before.

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Q. Was this the day your brother was getting married?

A. Yes.

Q. Did you go to the wedding?

A. Yes, sir.

Q. Now, when you left work that day, did Mr. Smith say anything to you about when to work again?

A. Yes, sir.

Q. What did he say?

A. He said that Jack, Russell, Pete and myself would all have to take trucks out Monday.

Q. Did you come back Monday to work?

A. Yes, I did.

Q. Did you work Monday?

A. Yes

Q. Did you work Tuesday?

A. Yes.

Q. Did you go to the meeting in Princeton on October 10th?

Q. Yes, I did.

Q. Did you have any discussion with Smith prior to October 10th about this meeting?

A. No, I didn't.

Q. How did you go to Princeton on the 10th? October 10th.

A. We went in Russell's car.

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Q. Did you see Mr. Hunnicutt?

A. Yes, we did.

Q. Did you see him on more than one occasion?

A. What do you mean about that?

Q. Did you see him more than one time?

A. Yes.

Q. Well, tell us about the first time you saw Mr. Hunnicutt, where and when.

A. I seen him in his office at the Pepsi-Cola plant in Princeton.

Q. Who was there present, or who was in the office?

MR. TAYLOR: Objection. It assumes there was someone there.

TRIAL EXAMINER: Overruled.

A. It was Jackson Brown, Mr. Hunnicutt and myself.

By Mr. Gravitt:

Q. Well, what was said on this occasion, if anything?

A. He said that the Teamsters had done ruined him, and that he couldn't operate.

Q. Did Mr. Hunnicutt talk to you again?

A. Yes.

Q. And where did that conversation take place?

A. It took place in his office.

Q. And who was present at this time?

A. Mr. Hunnicutt and myself.

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Q. Was anyone else present?

A. No; not that time there wasn't.

Q. All right. Just tell the Trial Examiner, please,

what was said on this occasion.

A. He was telling me about --

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Go ahead, now.

A. (Continued) That was where Mr. Hunnicutt and myself was. Right?

TRIAL EXAMINER: Yeah. This was the private talk you had with him. Go ahead. What was said?

A. (Continued) He was discussing about the heat situation, and freezing up of the drinks. And about Kenny's wreck.

By Mr. Gravitt:

Q. Well, tell us what he said, Mr. Keffer.

A. He said that if there were no heat out there in the building that the drinks would freeze up and burst. And that there's not - there weren't enough electricity out there to work by.

Q. Just tell us what you said and what he said, if anything, if there was any more that you can remember.

A. That's all I can remember.

TRIAL EXAMINER: What did he say about Ken's wreck?

THE WITNESS: About Ken's wreck. He said that he had the insurance agents there, he wanted to clear it up somehow that - I don't know what he means by clearing it up. And he said he wished we had brought along with us.

TRIAL EXAMINER: He said what?

THE WITNESS: That he wished we had brought Ken along with us.

TRIAL EXAMINER: I see.

By Mr. Gravitt:

Q. Now, while you were at Princeton on the 10th, did he say anything about closing the plant?

A. Yes.

Q. What did he say about that?

A. He said as far as the plant was concerned out here, that it was closed. And he asked me if they ever decided to open up if I would come and work for him.

Q. What did you tell him?

A. Yes.

Q. Did he say anything to you about working out of Princeton?

A. Not me, he didn't.

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Q. Now, directing your attention to, say September and the first week of October, the early part of October, were their sales building up?

TRIAL EXAMINER: What year?

By Mr. Gravitt:

Q. (Continued) In '62.

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A. Yes, there was. From -- You mean from the last part of May of '62.

Q. Yes, sir. After you had that labor trouble there.

A. Yes, uh huh, they were.

Q. The sales dropped off, did they not?

A. They did.

Q. And now I'm asking you if they were building up during this period.

A. They did; yes, sir.

* * * * *

Q. Were you given any notice that you were going to be -- that your services were going to be terminated on October the 10th?

A. No, sir.

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Q. Mr. Keffer, I was asking you questions about John Davis. Now, I want to ask you if you saw John Davis at the

503

plant on Saturday, October the 6th?

A. Yes, I did.

Q. And was Mr. Smith there?

A. Yes, he was.

Q. Did you hear Mr. Smith tell you or Davis anything?

A. He told Davie --

Q. What did he tell him?

A. When he was cut off.

Q. Do you recall him saying any more about it?

A. No, sir.

Q. Now, did Mr. Smith say anything to you about your brother's accident on this day?

A. October the 6th?

Q. Yes, sir.

A. Yes, he did.

Q. Well, tell us, please what was said.

A. Just before I left to go, to get ready to go to the wedding he told me to tell Kenny that Hunnicutt told him to cut him off on account of the wreck.

TRIAL EXAMINER: On account of the what?

THE WITNESS: On account of the wreck.

TRIAL EXAMINER: All right.

Go ahead.

MR. GRAVITT: No more questions on direct, sir.

TRIAL EXAMINER: Do you have any?

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MR. ZAZZALI: I have no questions, sir.

TRIAL EXAMINER: Proceed with cross.

MR. TAYLOR: Thank you, your Honor.

Cross-Examination

By Mr. Taylor:

Q. Mr. Keffer, you testified that during the year 1962 in the new building that you worked there on occasion after dark. You didn't work there very often after dark, did you?

A. Yes, we did; when we had to unload the trucks, and help unload and load, we did.

Q. Well, as many as five times?

A. Yes. If not more.

Q. How many more?

A. That, I wouldn't know right offhand.

Q. Well, let's say as many as ten times?

A. I wouldn't be sure; it was around ten.

Q. Somewhere between --

A. I'd say approximately from eight to ten, somewhere around in there.

Q. Okay. And everytime you did, you complained about the lack of light, didn't you?

A. No.

Q. Well, you did on several occasions, didn't you?

A. When there was one burned out, busted out.

Q. But on several occasions you talked to Mr. Smith

505

and others about, "When are you going to get these lights in so we can work here and see what we're doing".

A. No; I don't recall asking that.

Q. You didn't have any problem with this in the summertime because it stayed light a pretty long time,

didn't it?

A. Yes, it stayed light during the summer.

* * * * *

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Q. Okay. You didn't use the salamanders very long out there, did you?

A. What do you mean about, didn't use them very long?

Q. You had to quit using them because the boss said to quit using them. Isn't that right? Because of the fire insurance.

A. We used them up, if I'm not mistaken, a day or so before they shut it down.

Q. You used them after you were told not to?

A. We were never told not to.

Q. Pete Smith didn't tell you not to use those salamanders?

A. No, sir, he didn't.

Q. You had the salamanders on out there in October and used them.

A. Yes, we did.

Q. And it wasn't very cold out there. Isn't that what you testified to a few minutes ago?

A. No, it wasn't.

Q. What did you have them on for, to protect the drinks?

A. No, sir.

Q. You just had them on to have them on.

A. We had them on, it was chilly of a morning. But it wasn't cold inside the plant. But --

Q. If you hadn't had the salamanders it would have been

509
cold inside the plant, wouldn't it?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. No.

By Mr. Taylor:

Q. You didn't need them.

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. You didn't need them, no, sir.

By Mr. Taylor:

Q. You used them anyway.

A. On the permission of Pete Smith.

* * * * *

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Q. How many lights did you have on the string out

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there?

A. You mean just in the warehouse, or the whole place?

Q. In the warehouse.

A. I couldn't give you the definite number, but I could give you approximately around what it was.

Q. What's your best estimate?

A. I'd say around ten to twelve, somewhere around in there. Maybe less and maybe a little more.

Q. Does that include the lights in the office and back in the restroom facilities, or were these all out in the warehouse?

A. In the warehouse.

Q. They didn't have any shades on them, or anything like that, did they?

A. No, sir.

Q. They weren't fluorescent.

A. No, they wasn't.

Q. 75 or 100 watt bulbs?

A. 75 or 100, I think so.

Q. It wouldn't have been any more than that, would it?

A. That, I wouldn't say for sure.

Q. As a matter of fact they weren't but about three or four of those lights, and they were strung there by I. B. Cade, weren't they?

A. No, there were more than three or four, because

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there was three on one side -- There was ten to twelve.

TRIAL EXAMINER: How were they put up?

THE WITNESS: How they was strung up?

TRIAL EXAMINER: Yeah.

THE WITNESS: There was a row on this side, a row down the middle, and a row on this other side, as best as I can remember.

TRIAL EXAMINER: How were they wired up, do you know? Were they just hanging on wires?

THE WITNESS: There was pigtails.

TRIAL EXAMINER: Wires coming down and fastened on the end of the wires?

THE WITNESS: The wires going across, then you've got those pigtails, you know.

TRIAL EXAMINER: That come out?

THE WITNESS: Right.

TRIAL EXAMINER: That drop out?

THE WITNESS: Right.

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515

By Mr. Taylor:

Q. You weren't there in May, 1962?

A. Yes, I was there, but I mean when they were in there fixing up the building.

Q. You weren't there when they worked on the building, Mr. Cade was working on the building.

A. Could you explain that just a little bit?

Q. You are not telling us that you weren't at the Stanaford Road plant at times when Mr. Cade was working out there on that building, are you?

A. You mean before he got it finished or afterwards?

Q. I mean in the course of the construction of the building.

A. (No response.)

Q. He was out there before May 15, 1962, wasn't he?

A. Yes, he was.

Q. And you were out there before May 15, 1962.

A. I was.

Q. And you worked out there.

A. Yes.

Q. And he worked out there.

A. Yes, he did.

Q. He laid block.

A. Yes.

Q. He poured concrete.

516

A. Yes.

Q. And he strung these lights to see how the job was to be done, didn't he?

A. Now, that, I didn't see him do.

Q. He didn't put the lights in.

A. I couldn't say for sure.

Q. Do you know who did?

A. No, I don't. But --

Q. But the lights were in when he was doing the work out there, whether he put them in or not, are the same lights that remained there after you all went

to work in the building. Isn't that right?

A. That, I couldn't say. It might be and it might not be.

Q. Well, you won't deny that they are the same lights.

A. And I won't deny that they aren't either.

Q. Okay. Now, you said something a minute ago about before the building was finished. As a matter of fact the building hasn't been finished yet, has it?

A. Not as far as everything goes, it isn't.

Q. Sanitary facilities haven't been finished, have they?

A. No, they haven't.

Q. And they weren't ever finished when you all were using them, were they?

517

A. No; they quit working on them May the 15th.

Q. Why did they quit working? Because of the union strike; wasn't that it?

A. Now, then, I wouldn't say for sure.

Q. I. B. Cade left there when the dispute started out here on the grounds the morning of May 15th. Isn't that right?

A. Yes, he did.

Q. He had been out there to work before that morning, hadn't he?

A. Yes, he had.

Q. And when the dispute began, he left, didn't he?

A. Uh huh.

Q. And took his men with him, didn't he?

A. Now, I don't think he took them. I think he rode with Mr. Hunnicutt that day.

Q. Well, the men who were working for him didn't do any more work out there that day, did they?

A. That, I don't know who was with him.

Q. Horton, for instance.

A. No, he didn't.

Q. Okay. Now, didn't Mr. Cade leave there with a fellow named Dougherty rather than Mr. Hunnicutt? That's the bulldozer operator.

A. That, I can't say for sure, but --

518

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Go ahead.

A. (Continued) Do you mind repeating that again?

By Mr. Taylor:

Q. He left there with the dozer operator, Mr. Dougherty, didn't he, instead of with Mr. Hunnicutt?

MR. GRAVITT: Who is the "he"?

MR. TAYLOR: We've been talking about Mr. Cade.

TRIAL EXAMINER: The man we've been talking about; this man.

MR. GRAVITT: You talked about Mr. Cade and Mr. Horton.

TRIAL EXAMINER: We've been talking about this man's operations.

Go ahead.

A. Like I say, I'm not for sure but I think he went with Mr. Hunnicutt.

* * * * *

520

A. Without any heat there would have.

Q. There hadn't been any heat out there either, had there?

A. Salamanders.

Q. Beyond the salamanders, no heat.

A. No.

Q. And the salamanders wouldn't have done the.

job in weather like today or weather like we've had in December, or

521

even January, or even November of 1962. Isn't that right?

A. According to how many you had going.

Q. Well, those that you had going out there wouldn't have done it, would they?

A. No.

Q. Okay. Now, moving to the restroom facilities. They were boarded up, weren't they?

A. No, sir.

Q. Never any boards across the entrance out there to the restroom.

A. There was one laid up there.

Q. And you were told not to go in there, weren't you?

A. No, sir.

Q. You took the board away so you could get in, didn't you?

A. Then we come out and put it right back.

Q. But, again, you were told not to use it. Isn't that right?

A. No, sir.

Q. Neither Pete nor Russell told you not to use it.

A. To the best of my knowledge, no.

Q. Weren't you out there when the Health authorities was there?

A. I don't remember it.

* * * * *

524 .

Q. And when you applied for membership in the Teamsters Union on October 5, 1962 you applied with full knowledge that your working days with Pepsi-Cola were about over because they were closing out the stock. Isn't that right?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. No, sir.

By Mr. Taylor:

Q. Pete Smith had told you that he could keep a couple of people there of his choice, and you were one of them, to run out the stock. Isn't that right?

A. No, sir.

Q. He didn't tell you that.

A. He didn't say run out the stock.

* * * * *

525

By Mr. Taylor:

Q. Well, when you joined the union you knew the other boys were gone, didn't you?

A. They weren't all gone. There hadn't been but just a few of them that had been notified.

Q. They had all been notified except for Jackson Brown, hadn't they?

A. No, they hadn't.

Q. And that's the reason that you and the rest of these boys went out and joined up. Some of them had been notified,

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and you all knew what was coming, and you went out to do something about it. Isn't that right?

A. No, sir; we didn't know what was coming.

Q. Well, those that had been notified knew what had come, didn't they; they knew they were through?

A. Those that had done been --

MR. GRAVITT: Objection as to what someone else knew. This witness is competent to say what other people knew.

TRIAL EXAMINER: Overruled.

A. Repeat that again.

By Mr. Taylor:

Q. Some of these boys had been notified, hadn't they?

A. (No response.)

Q. They had drawn their pay, and had been told that was their last pay.

A. I think there was two or three of them.

Q. Four of them, weren't there?

A. No, there weren't.

Q. There weren't four?

A. As far as I know there weren't.

Q. And you all knew, you knew, and the rest of you knew that they had drawn their last pay, or were going to draw it because they had been notified that they had been laid off. You knew they had been laid off?

527

A. Yes, I knew they had been laid off.

Q. That's right. And then, and not until then, you went out and joined the Union. Isn't that right?

A. When the trailer come in, that's when we joined.

Q. I understand that. The boys who were laid off knew about it before then, before the trailer got there.

A. Knew what?

Q. That they had been laid off.

A. The ones that was notified, yes.

Q. Right. And it was after you knew that they had

been notified that they were going to be laid off that you went out and joined the Union.

A. Yes.

* * * * *

528

Q. You never knew that you were going to be laid off until you got to Princeton on the 10th.

A. No; no, sir.

Q. As a matter of fact Pete had told you that you were going to be there as long as it took to run out the stock, didn't he?

A. No, he didn't.

Q. And he told you back before October 5 that they were going to close the plant, didn't he?

A. No, he didn't.

Q. He told you on October 5, then.

A. No, he didn't.

Q. You didn't know that until you got to Princeton.

A. I didn't know that until the 10th.

* * * * *

A. No, sir; Pete punched me out.

Q. And you knew before October 6th that they were going to have to let Kenny go because of the insurance problem, didn't you?

A. What day are you referring that I knowed?

Q. You knew it before - You testified a little while ago that you found that out on October the 6th, Saturday. You

529

knew it before then, didn't you?

A. No, I didn't.

Q. You didn't know it before.

A. (Shook head in negative.)

Q. Well, Jack Brown knew it, didn't he?

A. They told -- Do you want me to explain?

Q. Yes, sir; yes, sir.

A. All right. October 4 - that's Thursday --

Q. Yes, sir.

A. All right. He gave it all out, and before Kenny went home they told him that he was cut off.

Q. He told Kenny he was through on the 4th.

A. Yes, sir.

Q. All right.

A. All right. Before I left the 4th, that evening, they told me to tell him to come back to work.

Q. Told --

A. On Friday the 5th.

Q. All right.

A. All right. He come back and worked Friday, the 5th. They didn't say nothing about it, Friday the 5th.

Q. But they did tell him on the 4th that he was through.

A. They said they had to let some of them go.

Q. And he was one of them, Kenny.

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A. On account of the wreck.

Q. That's right.

A. And then they hired him - told him to come back out.

Q. For the 5th.

A. They told him to come back out the 5th.

Q. All right.

A. All right. And then he went on Friday, providing that he was at work Monday. And they told me Saturday to tell him that he was laid off on account of the wreck.

Q. They told him when he came back to work on the 5th they were trying to save his job, didn't they?

A. No, they didn't say nothing like that.

Q. They were trying to working something around to get him inside.

A. No, they didn't.

Q. And they told him it was all contingent upon the insurance company agreeing to it, didn't they?

A. No, they didn't.

Q. And he didn't work another day beyond Friday the 5th, did he?

A. No, he didn't. He would have worked Saturday, I suppose, if he hadn't been getting married.

Q. But he just worked Friday. Right?

A. Right.

Q. And they told the other boys on the 4th they were through, besides you and Jackson Brown, didn't they?

A. No, they didn't.

Q. Well, isn't that just what you said?

A. They told them all except John Davis and Jackson Brown and myself.

Q. They didn't tell John Davis?

A. No, they didn't.

Q. That's because he wasn't there. And you don't know whether --

A. I don't --

Q. You don't know whether Pete told John or not, do you?

A. No, I don't.

Q. Aside from John Davis and you and Jackson Brown, they notified the boys on the 4th.

A. As far as I know, I'd say yes.

* * * * *

537

A. No, he didn't.

Q. What did he tell you?

A. He said that if those Teamsters won, that he would lock the doors.

Q. He didn't say that, did he?

A. He sure did.

Q. He didn't make any threats to you about working there at all, did he, about loss of job, or anything else, did he?

A. He said that if they won that he would lock the doors.

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538

Q. He didn't threaten you with loss of your jobs if the Teamsters won the election, did he?

A. Yes.

MR. GRAVITT: Objection

I withdraw the objection.

By Mr. Taylor:

Q. He didn't make any promises to you if they didn't win either, did he?

A. If they lost?

Q. Yeah.

A. Yes, he did.

Q. What did he promise you?

A. He said on the uniforms and on the buggies.

Q. He didn't --

A. And on fixing the trucks; come over and fix up advertising.

Q. But that was not promised in return for your support in this election, was it?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. You mean -- What do you mean by that, now?

By Mr. Taylor:

Q. I mean he didn't promise you that if the Teamsters lost that he'd do all these things, did he?

A. Yes.

Q. What --

A. He come over there -- he said he'd come over there and help us increase sales.

Q. But he didn't say if the Teamsters lost he would do that, did he?

A. Not in those exact words.

Q. Because you all came over there to ask what he'd do.

A. No, we didn't.

Q. You did not.

A. No, we did not. We was told to go over there.

* * * * *

Q. As a matter of fact, he didn't promise you anything, did he?

A. Yes, he did.

Q. In return for your vote?

A. If you want to put it that way.

Q. He said to you, "Now, if you all vote against

the Teamsters I'll do this and this and this". Is that right?

A. He didn't put it like that.

Q. How did he put it?

MR. ZAZZALI: Your Honor, I object. At least on four occasions the man has testified as to how Mr. Hunnicutt put it.

TRIAL EXAMINER: Overruled.

A. He said that if the Teamsters was voted out, that he would come over and increase the sales, and on the uniforms,

542

and the buggies, and fixing up the trucks, and advertisement.

Q. If the Teamsters were voted out.

A. Right.

Q. He'd do all those things.

A. Right.

Q. He didn't say any of those things, did he?

A. Yes, he did.

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543

Q. You talked about uniforms there, didn't you?

A. Yes; Hunnicutt said that he would give us half

on uniforms.

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545

Q. Were you in the hospital?

A. Yes, I was.

Q. What was your trouble?

A. It wasn't because someone scared the hell out of me.

Q. It wasn't?

A. No, it wasn't. Because I had pneumonia.

* * * * *

546

Q. You testified here this morning that sales in October, September and October were higher than they were in May of 1962. The fact is you don't know what was sold in either of those months, do you?

A. No, but by the work I was -- I was always working in October, and in May, loading and unloading. It proved that they were selling more.

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549

Q. Okay. You found out that you were discharged on October 10, 1962, I believe you testified.

A. Right.

Q. But you knew before you went over that that's why you were going, didn't you?

A. No.

Q. Because you knew that you were there to run out the stock, didn't you?

A. No.

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550

Redirect Examination

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553

By Mr. Gravitt:

Q. On October 10th, the day you went to Princeton, were there any drinks in the warehouse?

A. In the Beckley warehouse?

Q. Yes, sir.

A. There were.

Q. Could estimate how many, approximately?

A. No, I couldn't.

Q. You testified that you didn't use the salamanders on the last few days you worked. Was it cold enough to use them?

A. No, it wasn't.

* * * * *

Q. Did you help unload the trailer when it would come over from Princeton with drinks?

A. Yes.

Q. About how many times a week would it come?

A. Four, five.

Q. Once a day, probably.

A. Sometimes twice a day.

Q. Would it average a day a week? I mean would it average -- yeah, would it average out to once a day for every working day in the week?

A. Sometimes; sometimes twice a day. Just like I said.

Q. When it came over, would they bring a full load?

A. Yes.

* * * * *

KENNETH E. L. KEFFER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Tell the Reporter here your name and present home address.

THE WITNESS: Kenneth E. L. Keffer, 118-1/2 Walker Avenue.

Direct Examination

By Mr. Gravitt:

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564 (2)

Q. Were you on a permanent route, or a temporary route, or how did you operate routes?

A. I was inside the plant then at that time.

565

Q. Was this a special run that you had gone out to service when you had the accident?

A. Yes, sir; I had to go to the Princeton plant to pick up some drinking cups.

* * * * *

567

Q. Did you work on October 5th, Mr. Keffer?

A. What day was that?

Q. The day you signed the union card.

A. Yes; yes, sir.

Q. Was anything said to you about laying you off on this day?

A. No, sir.

Q. Did you get married the next day?

A. Yes, sir.

Q. Were you ever informed that you were discharged, Mr. Keffer?

A. Yes, sir.

Q. By what means? Who told you?

A. My brother Ronald.

Q. What did he tell you?

A. He told me they had laid me off.

Q. When did he tell you that?

A. Saturday evening, the 6th of October.

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568

Q. Will you just tell the Trial Examiner, please, what you recall that was said during this meeting?

A. Well, he promised us all two-wheel buggies, increase on our selling, more advertising if we voted the Teamsters out.

If not, he would lock the plant up.

* * * * *

Cross-Examination

By Mr. Taylor:

* * * * *

Q. Shortly after that you applied for membership in a union, didn't you, District 50?

A. I filled out a paper, yes.

Q. An application card, wasn't it?

A. I believe that's what it was, yes, sir. But at Mr. Hunnicutt's request; that's what Mr. Smith said. He said Mr. Hunnicutt wants us to sign them papers.

* * * * *

Q. Did you load your truck that night?

A. Yes, sir.

Q. What time did you finish loading?

A. That, I don't know.

Q. 5:00?

A. It might have been 5:00; it might have been after.

Q. Well, 5:30 maybe.

A. It might have been. I can't say for sure.

Q. Then, of course, after you had finished loading the truck, you got to thinking about getting married the next day, didn't you?

A. Yes.

Q. And you had loaded the truck to have it ready to come back to on Monday, hadn't you?

A. Yes, sir.

Q. And that was - oh, an hour before you signed your Teamsters application.

A. Yes, I believe so.

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580

Q. On August 29th, 1962 Mr. Hunnicutt didn't promise you anything in return for your vote in the election, did he?

A. He told us that we would get new buggies, better sales - or increase the sales, rather, more advertisement if we vote them damn thugs out.

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583

BILLY JOHN LUKACH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Tell the Reporter your full name and present home address.

THE WITNESS: Billy John Lukach, 131 East Main, Beckley, West Virginia.

Direct Examination.

By Mr. Gravitt:

Q. Were you employed by the Pepsi-Cola Bottling Company in Beckley?

A. Yes, sir.

Q. When were you hired?

A. In late November, '54.

Q. Were you working for the company in 1961?

A. Yes, sir.

Q. Did you work from 1954 through 1961?

A. Yes, sir.

Q. Were you ever laid off for any long period of time, sir?

A. I was laid off when they moved from Central Avenue to Stanaford Road. And it was in April '62. And I was recalled back by Pete Smith June the 9th, on Saturday.

TRIAL EXAMINER: In '62?

THE WITNESS: Yes, sir.

* * * * *

By Mr. Gravitt:

Q. What did you do after you were recalled in June of 1962?

A. I was warehouseman, and I unloaded trucks, and loaded trucks back, and sorted bottles and sweep

the warehouse out.

Q. From June 9th until your discharge did you ever work at night in the building?

A. Yes, sir.

Q. Did you have enough lighting so that you could see

585

what work to perform?

A. Yes, sir.

Q. Did you use the toilet facilities there?

A. Yes, sir.

Q. Did anybody ever tell you not to use them?

A. No, sir.

* * * * *

587

Q. Did you sign a union card?

A. Yes, sir.

Q. When?

A. On October 5th. It was about 6:00 p.m., that evening.

Q. Did you work October 4th?

A. Yes, sir.

Q. What did you do?

A. I was helping Russell Blevins on a route.

Q. Was there anything said about you working when you returned to the plant that day?

A. Yes, sir.

Q. What was said? And by whom?

A. I come in and went in the office, and Mr. Smith informed me that I was laid off, and he said he didn't know what Mr. Hunnicutt was going to do about the union, and he said if they straightened this thing out he'd call me back to work, when they straightened out.

* * * * *

Q. Now, the amount of work that you were performing there from the time you were recalled to work, was it increasing from the time you were separated from your employment in October?

MR. TAYLOR: Objection, your Honor; leading.

TRIAL EXAMINER: Overruled.

A. It was increasing a little bit.

By Mr. Gravitt:

Q. How do you know?

A. Unloading, and by loading the trucks at night in the warehouse.

* * * * *

Q. Now, will you tell the Trial Examiner, please, what was said at this meeting, the best you recall?

A. Mr. Humnicutt said "If you think anything of your God and your country, you will vote them damn thugs out". And he kept condemning terms, bigger terms about the Union, and he promised the employees to continue their jobs, and to bring advertising over Beckley, and help rebuild the routes, and get two-wheel buggies to haul soft drinks on.

And since the election was held, August 31st, none of them promises have been kept.

Q. Did he tell you why he was promising you those things?

A. Oh, he said if we voted the Teamsters Union in he'd shut up the Beckley plant, lock it up, and wouldn't

operate under them damn thugs.

Q. Did he tell you why he was promising you the two-wheel carts?

MR. TAYLOR: Objection; repetitious.

TRIAL EXAMINER: Overruled.

Answer the question.

A. It would help to rebuild the routes, you know, get new buggies to haul cases on.

By Mr. Gravitt:

Q. I'm asking you, did he tell you why he was going to do those things for you.

A. If we voted the Teamsters Union out.

* * * * *

Cross-Examination

By Mr. Taylor:

Q. How many times did you work at nights out at Stanaford Road after you came back to work in June?

A. I'd say a pretty good bit.

Q. You were an inside man, a warehouseman. Isn't

592

that right?

A. Yes, sir.

Q. You helped load and unload trucks.

A. Yes, sir.

Q. And also the trailer that would come over from Princeton.

A. Yes, sir.

Q. When you say "a pretty good bit", what do you mean?

A. Sometimes three or four nights.

Q. Well, between June, 1962 and October, 1962, did you work out there after dark five times?

A. I think about three.

Q. About three.

A. Yes.

* * * * *

Q. As a matter of fact, the toilet facilities were boarded up out there, weren't they?

A. No, sir.

Q. Never were.

A. No, sir.

Q. You all took the boards down and used it, didn't you?

A. No, sir.

Q. And you were told not to use it, weren't you?

A. No, sir.

Q. And you did use it, didn't you?

A. Yes, sir.

Q. And you used it with the knowledge that it hadn't

been completed, didn't you?

A. Yes, sir,

Q. And when you walked outside the building you knew it hadn't been completed, didn't you?

A. No, sir.

Q. You didn't know.

A. No, sir.

Q. You could tell by the smell, and also by the sight,

597

couldn't you?

A. No, sir.

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598

Q. There's been some nights when it was down below 20?

A. Yes, sir.

* * * * *

599

Q. You've been around there when you and the rest of the employees, and Pete and Russell for that matter, have complained about not being able to see because of the lights. Isn't that right?

A. No, sir.

Q. Never have complained.

A. No, sir.

Q. Never heard Pete complain.

A. No, sir.

Q. The light was plenty adequate.

A. Yes, sir.

Q. It didn't need to be improved a bit.

A. Well, I could see behind them.

Q. As a matter of fact you had considerable breakage over there in the warehouse because it was dark in order to handle the drinks. Isn't that right?

A. No, sir.

Q. Did you have any breakage?

A. Had a few.

Q. About how much breakage a week?

A. I'm not sure.

Q. About how much - about how many cases of drinks would you break a week in the warehouse, not out on the route?

A. I'm not sure.

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609

Q. As a matter of fact Mr. Hunnicutt didn't threaten you in anyway, did he?

A. He just said if we didn't vote the union out that he'd lock up the doors and we wouldn't have no job.

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610

Q. He just said he was going to lock the doors?

A. Yes, sir.

Q. And he didn't make any promises to you either, did he?

A. Yes, sir. He said he was going to bring advertising, two-wheel carts, rebuild the routes, repair all equipment.

* * * * *

Q. You were laid off on 10-4 -- on October 4, 1962, weren't you?

A. Yes, sir.

Q. At that time Pete told you that they were going to

611

close the warehouse, didn't he?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

Q. As a matter of fact he told you that, and that they were going to run out the stock in the warehouse, and run it out of Princeton, didn't he?

A. No, sir.

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612

Q. As a matter of fact Pete didn't say anything to you about coming back to work, did he? He said they were closing her up. .

A. Yes, sir, he told me he didn't know what Mr. Hunnicutt was going to do about the union, and he'd recall me back to work when he got things straightened out.

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MR. GRAVITT: Dallas Milam.

DALLAS EDWARD MILAM

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Tell the Reporter your full name and present home address.

THE WITNESS: Dallas Edward Milam, Box 693, Crab Orchard, West Virginia.

TRIAL EXAMINER: Proceed.

Direct Examination

By Mr. Gravitt:

Q. Mr. Milam, when did you begin working for the Pepsi-Cola Company here in Beckley?

A. Sometime in the latter part of June, 1962.

TRIAL EXAMINER: '62?

THE WITNESS: Yes, sir.

By Mr. Gravitt:

Q. And what was your job?

A. I was a route salesman.

Q. Can you recall approximately the number of cases that you were selling each day, say about the last of June or

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July?

A. Well, when I first started I sold from about forty to sixty cases a day.

Q. Were you paid a straight salary or a commission, or were you --

A. A commission on each case.

Q. A commission on each case.

A. Yes, sir.

Q. Now, directing your attention to the latter part of September or the first part of October, about what was your average per day in sales?

A. It was just about double what it was when I began there.

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Q. Did you attend the meeting in Princeton on August 29th, Mr. Milam?

A. Yes, I did.

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Q. About what time did you arrive in Princeton, if you recall?

A. About 6:00 p.m.

Q. What did -- Who did you see?

A. Well, I saw some elderly gentleman who was the checkoff man there, and when I first got there. Then about

forty-five minutes later Mr. Humnicutt came in.

Q. Did you have any conversation with him?

A. With who, sir?

Q. Mr. Humnicutt.

A. Yes, I did.

Q. Would you just tell us, please, what was said, Mr. Milam?

A. Well, I can't recall everything that was said. We talked for quite a while, and we discussed the problem that he was having with the men here, and the union. And he told me about the Parkersburg plant, and the union at Parkersburg, the Teamsters Union being at Parkersburg, and he said he didn't have a man working in Princeton at the time that would have anything to do with the union, and the men in Parkersburg were not satisfied at all with the Teamsters Union. And everytime he went there the men would come to him and ask him to help get those damn thugs out of there.

Q. Well, now, did you eat before you got to Princeton, or --

A. No, sir; I eat after I got to Princeton.

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Q. About how long did this meeting last?

A. Oh, I would say from an hour to an hour and a half.

Q. Now, will you tell us, please, what you recall Mr. Hunnicutt saying?

A. Well, he told us that we were having an election coming up the next day, the next day or so. And that if we didn't vote the Teamsters Union out we was out of a job; and if the Teamsters Union got in, that

he would lock the doors because he wouldn't operate under a bunch of them thugs like they were.

And he said if we voted them out that he would help us promote advertising, give us better equipment, and that they had appropriated so much money for advertising in Beckley, but as long as that Teamsters Union was there he would not put any money out for advertising in Beckley.

Q. Do you recall anything being mentioned other than advertising?

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A. Well, he said we could make more money and he could make more money. He says, "I know you've been having a pretty tough time of it down there, but," he said, "If you vote those Teamsters out, we can all make more money."

Q. Do you recall District 50 or Reid Davis being mentioned by Mr. Hunnicutt, Mr. Milam?

A. Yes, it was.

Q. What do you recall about it?

A. He said that he didn't mind if we signed a contract with Mr. Reid Davis, is the exact words that he said, but he would not operate a plant under them damn Teamsters.

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Q. Was there any shortage of drinks there on October 4th?

A. No, sir, I don't think so. I don't recall.

* * * * *

Q. Did you see Mr. Smith there on October 4th?

A. Yes, sir.

Q. Did you have any conversation with him?

A. Yes, I did.

Q. Where did you talk to him?

A. In the office, at the Beckley plant.

Q. Well, just tell the Trial Examiner, please, the nature of this conversation and what was said.

A. Well, I talked to him in the morning, and in the evening. Which would you --

Q. Tell us of the morning, and then tell us of the evening.

A. Well, I came back to work on October the 4th; I had been off for a week with my hand cut. And I came into the office on October the 4th, and Mr. Smith was -- he looked around and saw me, and he said, "Who is this guy?" Of course, he was always joking just like that with us.

And I said, "I'm one of those Pepsi-Cola route salesman."

He said, "Former route salesman."

I said, "What do you mean?"

He said, well, Mr. Hunnicutt had been kind of raising hell over what had been happening down there about the Teamsters Union, and he said he might close everything up; he didn't know; for me to go on out, and he'd see when I came in that night.

Q. Did you see him that night?

A. Yes, I did; when I came back in.

Q. Well, now, this conversation took place in the morning, was there anybody else present?

A. Well, I think some of the men were around; I don't remember which ones, but some of them were.

Q. Well, tell us what was said in the evening, now, Mr. Milam, if you will.

A. Well, some of us got in before the others did that evening, and he said we all should wait around; he wanted to see us all together.

And after he got us all together he said Mr. Hunnicutt wasn't satisfied with the things was going, and they was going to let some of us go but they didn't know which ones. He said he could use his own judgment, and to keep three men, I believe, I'm not quite sure, but they were

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undecided who to keep. And some of us made the suggestion that the oldest men should be the ones that stayed.

And so Cecil Smith and Russell Blevins got in

the company truck and drove down the road to discuss it between them, to see which ones they would keep. And they decided on Ronald Keffer, Jackson Brown, and I think Kenneth Keffer. But they said, "the rest of you go on home, but come back in the morning and check with me. You might be able to go back to work." He said, "I hope we can get this thing straightened out."

Q. And did you leave the plant -- when you left the plant that day --

After leaving the plant that day did you have any conversation with Mr. Hunnicutt?

A. Yes, I did.

Q. What kind of a conversation did you have with Mr. Hunnicutt?

A. I called Mr. Hunnicutt on the telephone.

Q. Where did you call him from?

A. I called him from a public phone down the road.

Q. And did Mr. Hunnicutt answer the phone, or --

A. His wife answered the phone, and I asked for Mr. Hunnicutt, and he came to the phone.

Q. And did he identify himself, or, ---

A. Yes, he did. He said, "This is Mr. Hunnicutt."

Q. And you just tell us, please, if you will, the

nature of that conversation.

A. Well, I told him what Mr. Smith had told us, and that he was going to let some of us go. He said, "Well, maybe he's not going to let you go." He said, "Are you sure you're going to go?"

I said, "No, I'm not positive."

He said, "Well, maybe you're not. Don't worry about it." He said, "I don't have time to talk now," because some of his wife's - his, or his wife's kin people had died in Virginia and he was in quite a hurry to leave, so it seemed to me, and he said he would call Mr. Smith, though, and see what they could work out.

Q. Work out for what? Do you -- did he say?

A. My working.

Q. Was anything said about promises, or along that line?

A. Yes, there were.

Q. What was said?

A. I said, "Mr. Hunnicutt, is this what we get for the promises you gave us in Princeton; that since I've begun work here I've just about doubled my sales, and you made us certain promises in Princeton, and we've kept our end of the bargain, and what about you?"

So he denied making any promises. And I said, "Well, Mr. Hunnicutt, you needn't deny it to me because I heard you with my own ears."

And he said, "Well, I don't have time to talk about it now. I'll call Mr. Smith and discuss it with him."

Q. And did you ever return to the plant after this --

A. Yes, I did.

Q. When?

A. I went straight back to the plant following the conversation with Mr. Hunnicutt.

Q. What did you do at the plant, if anything, when you went back there?

A. I wanted to see if Mr. Hunnicutt called Mr. Smith?

Q. Did you ever talk with Mr. Smith further?

A. I don't remember any conversation. We probably did talk a little bit, but I don't remember.

Q. Did you ever talk about the Hunnicutt telephone conversation?

A. Yes; I asked Mr. Smith when I got back there if Mr. Hunnicutt had called him, and he said, no. And I said, "I'll wait around and see if he does call, and see what he has to say."

Q. Now, when you first started working there, or shortly thereafter, were A & P and Kroger buying Pepsi-Cola?

A. When I first started working, sir?

Q. Yes, sir.

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A. No, sir, they weren't.

Q. And did there come a time when they began buying from Pepsi-Cola?

A. Yes, sir. A & P started about three weeks prior to October the 4th; and Kroger started about two weeks, I think - I'm not quite sure of the date.

Q. Did this reflect any difference in your sales, Mr. Milam?

A. Yes, sir; about --

Q. In what way?

A. Well, it gave me about forty to fifty more cases a week from what I had been selling.

Q. Did you ever sign a union card, Mr. Milam?

A. Yes, I did.

Q. When did you sign one?

A. On Thursday, October the 4th.

Q. And where did you sign it?

A. At Mr. Harris' home.

Q. While you were working at the plant did you see any pickets out in front of the plant?

A. Yes, sir, I did.

Q. About how many did you ever see at one time out there?

MR. TAYLOR: Object, your Honor; irrelevant.

TRIAL EXAMINER: Overruled.

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A. From three to five men, I think, was out there.

By Mr. Gravitt:

Q. Did these continue - did the same number continue throughout the time you were working there? Was there any change in it?

A. Yes, sir. Not that I can recall, sir. I'm not sure, but I don't think there was any change.

Q. Did anyone ever keep you from going into the plant, pickets?

A. No, sir.

Q. Did they ever keep you from coming out of the plant, sir?

A. No, sir.

MR. TAYLOR: I object to the entire line of questioning, your Honor, as irrelevant. There's no issue about that here, on our part, certainly.

TRIAL EXAMINER: Overruled.

By Mr. Gravitt:

Q. Now, did you ever get your check in October for your last work there, Mr. Milam?

A. Yes, I did.

Q. When did you get it, sir?

A. On Saturday, October 6th.

Q. And where did you get it?

A. I got it from Mr. Smith at the intersection of

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19 and 21, I believe; it's on the By-Pass.

Q. Well, did you have any conversation at this time with Smith?

A. Yes, I did.

Q. What was said?

A. Well, Mr. Smith and Mr. Blevins were in the company truck delivering drinks to, I think Club 16, and they stopped, and I stopped, and we started talking about this union deal, and what was happening. And Mr. Smith said, "I'm not quite sure yet what will happen. The rest of the men have all joined the Union now, and they might get something worked out, I don't know." He said, "You just check back with me and maybe we can get you back to work." He said, "We hope we can get it straightened out."

Q. Was that the last check you got?

A. Yes, it was.

Q. Was there any notice, or anything with the check when you got it?

A. Nothing, sir; just the check. Yes -- excuse me, sir. There was -- He told me when I got my check that - it was a little short of what I thought I should have, and he said they took out for uniform allotment. We were to pay half, I think, on uniforms, and Mr. Hunnicutt was to pay half, and he had charged me some on the uniforms, or something like that. I'm not sure what it was, but I think it was that. We had

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got the uniforms about a week before that.

Q. Now, did you go to the plant on Monday? I'm talking about the Monday after this Saturday that you just referred to, sir?

A. Yes, sir, I did.

Q. And did you see Mr. Smith there on this day?

A. Yes, sir, I did.

Q. Where did you see him?

A. At the company office, the Beckley plant.

Q. Did you have any conversation with him?

A. Yes, I did.

Q. Well, tell us what was said, if you can recall it, please.

A. Well, when I walked through the door Mr. Smith was talking to Mr. Hunnicutt on the telephone, and he says, "Mr. Hunnicutt, Dallas Milam just walked in the office; should I send him on out today?"

And Mr. Hunnicutt, I could hear him through the telephone, he says, "Hell, no; lay him off."

So Mr. Smith says I couldn't work, and I'd have to go back home."

Q. Was anybody else in the office other than you and Smith?

A. Not that I recall, sir.

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Cross-Examination

By Mr. Taylor:

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Q. About how much money would you make when you first went to work per week?

A. I don't remember, sir - \$35.00 or \$40.00 a week, something like that. I'm not sure of that.

Q. What did you make in September, 1962? About the same?

A. No sir; it was quite a bit more.

Q. How much more?

A. (No response.)

Q. \$50.00 a week?

A. I made more than that, sir.

Q. Did you?

A. Yes, sir. Usually around \$65.00, \$70.00, or \$75.00 per week. I'm not sure.

Q. How were you paid - commission?

A. Yes, sir.

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Q. The fact is you're not sure exactly what you sold or what you didn't sell, are you?

A. I know that I just about doubled what I was selling when I started there. I do know that.

Q. You know that.

A. Yes, sir.

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Q. Well, all of you were talking around there about increased sales, weren't you?

A. I don't -- we probably did talk about it a little bit. I don't remember what was said, but --

Q. You felt like you were doing a lot better.

A. Yes' uh huh.

Q. And that was the impression that all you employees had, that things were getting better.

A. I don't know if everybody had that impression or not, but I know that things were getting better for me. I had gotten about, probably ten customers in town, like A & P supermarket, and Kroger's, that I didn't have before, and actually that was an increase sales.

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Q. And at that time he told you that he had a contract at Parkersburg and the men were unsatisfied.

A. Yes, sir.

Q. And he told you that the men at Princeton wouldn't have anything to do with a union.

A. He said he had some men that had been there quite a few years, and they wouldn't - none of them wanted anything to

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do with any Teamsters Union.

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Q. And he didn't make you any promises about what he was going to do if they lost, did he?

A. He told me that he understands that we've been

having a pretty tough time in Beckley, but after this election if we voted right the problem would be over and it would be better for all of us.

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Q. I say there weren't people that had been buying from you in August that were buying from you in September.

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Isn't that right?

A. A lot of people bought from me in September that didn't buy from me when I began working there.

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Q. As a matter of fact, you all asked about advertising and getting some signs, didn't you?

A. I don't remember, sir. Mr. Hunnicutt said that he would give us more advertising - more advertisement.

Q. You all asked about the signs, and he said you could use whatever money was in the advertising budget, didn't he?

A. No, sir; he said that they had appropriated so much money for advertisement in Beckley, but they wasn't going to spend a damn penny as long as they had those Teamsters in there.

Q. As a matter of fact, he didn't say any such thing, did he?

A. He certainly did.

Q. He never made any threat about closing down if the Teamsters won, did he?

A. I just said he did, sir.

Q. He didn't, did he?

A. He certainly did.

Q. And he didn't make any promises about what would happen if you voted against the Teamsters, did he?

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A. He certainly did, yes, sir.

Q. And he--That was never discussed, was it?

A. It certainly was.

Q. As a matter of fact, somebody asked about what would happen if the Teamsters prevailed in the election, and he said that there were Ins and Outs. Isn't that right?

A. Mr. Hannicutt volunteered the information. He said if those Teamsters won the election he would lock the damn doors because he wouldn't operate under a bunch of thugs.

Q. He didn't tell you that, did he?

A. He certainly did.

Q. And all these things that he said, he said without any questions from you all; he just started off and talked until he got it all off his chest.

A. He didn't give anyone else time to ask any questions.

Q. You all walked in there, and he shut the door and started out, and then when he got through, that was it. Isn't that right?

A. I said possibly before the conversation started that maybe somebody else said something. I do remember somebody else maybe saying something, but I didn't hear every word that was said in there. I heard it but I didn't pay any attention to it.

Q. But after he warmed up, nobody did any talking. He

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finished and that was the end of the meeting.

A. Very little, if any at all.

Q. And then you all went out, and that was it. Isn't that right? The meeting was over.

A. There was some dispute over a bottle of Pepsi-Cola or something like that, and I think Mr. Smith had said they had had a half a bottle of Pepsi-Cola, or something, with a cigarette butt in it, and this was before we went out, and Mr. Hunnicutt said, "Yes; that's some of them damn Teamsters' work." He said that somebody had caught one of them trying to sabotage one of the Princeton trucks, caught a man on the truck and he had put the cigarette butt in the bottle of pop.

Q. And that was the end of the meeting.

A. That was the end of the employees' meeting in

there. Mr. Smith took a bottle of drink and went back in and talked to Mr. Hunnicutt.

Q. That was the end of your meeting, wasn't it?

A. That's right, sir.

Q. And he accused the Teamsters of sabotaging the trucks.

MR. GRAVITT: Objection.

A. He did.

TRIAL EXAMINER: Overruled.

A. (Continued) He did.

By Mr. Taylor:

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Q. And you worked up until you got hurt in September. Isn't that right?

A. Yes, sir.

Q. And then you didn't -- After you got hurt in September you were off until the 4th of October.

A. Yes, sir.

Q. Now, when you were off on the 4th, or after you came back out to work, you came out on the morning of the 4th, didn't you?

A. Yes, sir.

Q. And it was then that you were told that you would be laid off at the end of the working day, wasn't it?

A. I didn't hear -- No, it wasn't like that. He didn't say that I would be laid off at the end of the day. He said TO COME ON TO WORK: We're having some trouble. Mr. Hunnicutt

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was kind of riled up over what he was going to do, and possibly they might have some trouble over the men working.

Q. You weren't in any union on the 4th of October in the morning, were you?

A. No, sir.

Q. You weren't in the Teamsters Union.

A. No, sir. I wasn't in any union.

Q. And none of the other employees was in the Teamsters Union on the morning of the 4th, were they?

A. No, sir.

Q. And amongst you men out there, there hadn't been any talk about joining any union up to that time, had there?

A. There had been talk about joining the Mine Workers Union, and we had --

Q. There hadn't been any talk about joining the

Teamsters Union, though, had there?

A. No, sir. We had thought of the Teamsters, as Mr. Hunnicutt said, a bunch of damn thugs; they couldn't help us any if we joined them.

Q. And you went on out to work on the 4th. Isn't that right?

A. That's right, sir.

Q. And when you came back in he told you again that you were were through, didn't he -- Mr. Smith?

A. There was no again to it, sir. He just said that

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Mr. Hunnicutt wanted to keep some of the men and let some of them go, but the ones he let go, to check back possibly they might get to work the next day, or in the next two or three days, sir.

Q. And you were one of them that they let go, one of the men they let go, on the 4th.

A. I was one of the men he told to go home and come back, that I might get to work the next day.

Q. You didn't, did you?

A. No, I didn't. I went back; I didn't get to work.

Q. And you haven't worked since either.

A. I have not.

Q. Was John Davis there that day?

A. On Thursday?

Q. Yes. The 4th.

A. (No response.)

Q. He was, wasn't he?

A. No, sir; I think he was off on sick leave. Now I wouldn't say for sure, but I believe he was off on sick leave.

Q. The men who were told that they could come back to work the next day were the two Keffers and Jackson Brown. Isn't that right?

A. I believe that's right, sir.

Q. Davis wasn't one of them.

A. I don't know.

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Q. And you drew your check on the 6th for that one day's work that you had done on the 4th.

A. Yes, sir.

Q. And that was after you had found that you were one of the men who would not have any more work that you called Mr. Hunnicutt on the evening of the 4th. Right?

A. When Mr. Smith said possibly some of us would go, I said to Mr. Smith at the time, I said, "Is this what we get for voting like we were asked to do?"

And, sir, you, yourself, if you'll recall, I think you told us one time when you were a kid you had a little trouble with the Teamsters Union and you hadn't cared nothing about them since, and you didn't think that they were anyone fit to work under.

Q. You didn't answer my question. It was after Mr. Smith told you that you wouldn't be kept on the 4th that you went down and called Mr. Hunnicutt. Isn't that right?

A. That was after, yes, sir.

Q. And after you talked to Mr. Hunnicutt, and then came back to the plant, it was then that you went down and joined or signed an application card in the Teamsters Union. Isn't that correct?

A. After Mr. Hunnicutt promised he would call Mr. Smith, and he didn't, I got the phone then and called Mr. Harris and explained the situation to him, and he said come on up and talk

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to him, and I did, and signed an application for the Teamsters Union.

Q. And that was after you had been laid off.

A. I wasn't laid off, sir, definitely.

Q. You haven't worked any, have you?

A. No, sir, I haven't.

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Redirect Examination

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By Mr. Gravitt:

Q. And did Mr. Davis tell you to just go on back to work and forget about the matter?

A. Yes, he did. He said that there was nothing he could do about it.

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JAMES HOWARD SARVER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Tell the Reporter your full name and present home address.

THE WITNESS: James Howard Sarver, Princeton, West Virginia.

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Direct Examination:

By Mr. Taylor:

Q. Are you employed, Mr. Sarver?

A. Yes, sir.

Q. By whom are you employed?

A. Pepsi-Cola Company of Princeton, West Virginia.

Q. What position, if any, do you hold with that company, sir?

A. President and Manager.

Q. What position, if any, do you hold with the Pepsi-Cola Bottling Company of Beckley, Incorporated.

A. None whatsoever.

Q. What relation, if any, are you to the executive vice-president of the Pepsi-Cola Bottling Company of Princeton, Incorporated.

A. Mr. Hunnicutt?

Q. Yes, sir.

A. My father-in-law.

Q. I'll call your attention to August 29, 1962, about 7:00 or 8:00 p.m. in the evening, and ask you if you recall where you were at that time?

A. I was at the Pepsi-Cola plant at Princeton.

Q. Who else was there, sir?

A. Mr. Bird and Mr. Hunnicutt.

Q. Were others there?

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A. They came in a little later from Beckley, the employees from Beckley.

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Q. Were there any other questions asked of Mr. Hunnicutt at the meeting?

A. Well, he said that he had heard that somebody had called this Ronald Keffer's wife and told her if she wanted him to stay alive that she'd better get him off that Pepsi-Cola truck.

And he wanted to know if that was true. And Ronald Keffer said yes, sir, that was true.

Q. Did he say anything in response to that?

A. No; he just said that somebody had called his wife, and threatened him, but he said it didn't scare him.

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Q. Now, I direct your attention to the morning of October 2, 1962, and ask you whether or not you were in conference with Mr. Hunnicutt and Mr. McCoy in this same office in Princeton, West Virginia?

A. Yes, sir.

Q. I'll ask you whether or not in the course of that conference Mr. Hunnicutt called Mr. Smith in Beckley?

A. He sure did.

Q. What did he tell Mr. Smith, please, sir, if anything?

A. Well, he discussed with Mr. McCoy and myself about closing the place down because Mr. and Mrs. Taylor had come back the night before the morning that we discussed this, and

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he said, "Now, I want to tell you and McCoy about this and see what you all think of it." And he was telling us that Jerry and John Taylor went to Beckley to take inventory, and the men over there was complaining about no lights, and they was slinging bottles around and breaking them, and Taylor come in there and said that it was just - it just wasn't doing no good, the men wasn't satisfied, and they was just throwing bottles around, and complaining about the restrooms, they was completed and they wasn't supposed to use them.

And he asked my opinion, and McCoy's, and I said, "I'd close it down before I'd let it operate that way."

And he said, "Well, then, I'm going to call Pete and tell him about it".

So he called Pete and I heard him, and in the conversation he told him to close that plant down, and keep two men of his choice to work the stock out.

And Pete must have said all right, because he hung up. That was the end of the conversation.

MR. TAYLOR: You may inquire.

Cross-Examination:

By Mr. Gravitt:

Q. This conference you refer to, sir, on October 2nd, was that the first time that you and Mr. Hunnicutt and McCoy had discussed the closing down of the plant?

A. Yes, sir.

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Q. That's October the 2nd, 1962?

A. Yes, sir.

Q. That you're talking about.

A. Yes, sir.

Q. And did you, also, advise Mr. and Mrs. Taylor that you were going to close it down?

A. Yes, sir.

Q. And then they went over to take inventory. Is that right?

A. No, sir. They went and took inventory the night before we discussed it.

Q. Well, that would have been October the 1st. Is that correct?

A. It was the night before we discussed closing it down. I don't recall the date, but it was the night be-

fore they came over here. And the next morning we was told by Mr. and Mrs. Taylor about the men, the way the men acted over here, and we decided to close it down.

Q. Was Mr. and Mrs. Taylor present at the time that you and Mr. McCoy and Mr. Hunnicutt had your conference that day?

A. No, sir.

Q. They came in later.

A. No, sir. It was before that they told us. Then they went out, and we discussed it.

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Q. Did you know the Union was trying to get in the plant there?

A. Yes, sir.

Q. When did you first find out about that?

A. Well, one day I come back into the plant - I'd been somewhere - and he told me the men had went over to Beckley

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to do some work on the building, and they came back in that afternoon, and I was asking one of them what was wrong, and he said, "Well, all the men all quit over there".

And so I said, "How come?"

They said, well, they just didn't want to work, and they had a lot of complaints.

So the next day I heard that they had went and signed up with the Teamsters Union.

Q. Was that in May?

A. That was back there when it first started. They signed up with the Union after they quit their job at the Beckley Pepsi-Cola plant.

Q. Why is it --

A. How could they join the union after they quit their job?

TRIAL EXAMINER: Is that a question you're asking?

THE WITNESS: Well - yeah.

TRIAL EXAMINER: You're not supposed to ask questions. Just answer the questions that are put to you.

THE WITNESS: I just wondered.

TRIAL EXAMINER: Well, talk about that some other time.

By Mr. Gravitt:

Q. Do you have a union in Princeton?

A. No, sir.

* * * * *

Q. Did you have a trailer running out of Princeton bringing drinks over to the Beckley plant?

A. Yes, sir.

Q. Did that come under your supervision, sir?

A. Yes, sir.

* * * * *

Q. Could you be mistaken, sir, about Brown having a mustache at the meeting?

A. I don't believe I could be mistaken, because that's one of the reasons that I could remember him, because he was, you know, different.

Q. He had a mustache?

A. Yes, sir.

Q. He was the only one there with a mustache. Is that correct?

A. Now, I wouldn't recall that. He was the one that was doing the most talking at the meeting. He had a mustache, and he was the one that was doing the biggest amount of the talking. He seemed like a leader, or something. He must have made up a list or something that they were going to discuss with Mr. Hunnicutt.

I know that he was doing most of the talking.

* * * * *

Q. Since you decided to close down the plant on October the 2nd, why did you keep sending the trailer over here loaded with drinks to Beckley?

MR. TAYLOR: Your Honor, I must object. He hasn't sent any trailer anywhere. That is not in the -- It is beyond the scope of the examination to start with. It's in evidence here that he is not connected with this operation, and he has no control over it. He hasn't sent anything over here.

MR. GRAVITT: Mr. Examiner, he said he discussed this matter of transporting the drinks with Mr. Hunnicutt, and they decided they would do it.

TRIAL EXAMINER: Well, I don't recall his exact testimony as to who decided, whether this man decided or whether Mr. Hunnicutt decided, or who decided. And in that respect the questions that you're asking may be lumping a bunch of people together. Maybe that's your purpose; I don't know.

I'm noting your objection and overruling it, but I'll consider it in considering the testimony.

MR. TAYLOR: Thank you, sir.

TRIAL EXAMINER: Answer the question.

A. We hauled drinks over here, yes, sir.

By Mr. Gravitt:

Q. Sir, that is not the answer to the question.

A. Why did we send them over here, you said.

Q. Yes, sir.

A. So the men could have drinks to sell. We wanted to service the Raleigh County area; they had to be serviced.

Q. The question was, sir, why did you send them over here after October 2nd?

A. Well, we sent them over here for them to sell drinks. That's the reason we sent them over here.

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Q. When Mr. Hunnicutt called Mr. Smith on October the 2nd, did he mention the union?

A. No, sir.

Q. Did he mention closing down?

A. Yes, sir.

Q. What did he say about it?

A. He said, "You close that plant. You cut them men off, all but two; you keep two of your choice to close that stock out."

Q. Did he tell him why he was closing it?

A. No, sir, he did not.

Q. Did he say anything else?

A. No, sir.

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Q. Do you know that the replacements over here signed up for the Teamsters?

A. No, I do not. I found out about it, though.

Q. When did you find out?

A. Here last week, when you said you was going to have a trial here.

Q. Who told you about it?

A. I think Mr. Hunnicutt said something about that they had signed up with the Teamsters.

Q. Now, that's the first time that you and Mr. Hunnicutt had had any discussion about the employees here signing up with the Teamsters. Is that correct, sir?

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A. Yes, sir.

Q. Did Mr. Hunnicutt have an office in Princeton?

A. Yes, sir.

Q. Is it close to your office?

A. Yes, sir.

Q. Do you see him frequently?

A. Yes, sir.

* * * * *

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Q. How many people are working now on it?

A. I'd say five.

Q. Are they working under your supervision?

A. No, sir.

Q. Under whose supervision are they working?

A. Beckley's supervision.

Q. Do they check in with the other Princeton drivers?

A. No, sir; they check in with the Beckley. All the Beckley checks in to Mrs. Taylor.

Q. And who do the others check in with?

A. Mrs. Atkins or Mrs. Hunt or Mr. McCoy.

* * * * *

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Q. What part of the Princeton operation of your Princeton location now is being occupied by the Beckley corporation?

A. You mean how much - how many of the men is working in this territory?

Q. The operation. How is it handled over there?

Do you have separate rooms?

A. No; separate desks.

Q. Who has separate desks?

A. Mrs. Taylor.

Q. Does she do any work now for Princeton?

A. No, sir.

Q. All right.

A. She does bookkeeping for Beckley Pepsi-Cola Bottling Company.

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TRIAL EXAMINER: What's the purpose of all this; you're going into great detail as to what they do in Princeton. What's that got to do with it?

MR. GRAVITT: Well, it's --

TRIAL EXAMINER: It's clear the plant is closed down over here.

TRIAL EXAMINER: Now, that is clear.

MR. GRAVITT: Yes, but it isn't clear as to where it went.

TRIAL EXAMINER: Well, what difference does it make where it went?

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MR. GRAVITT: It may.

TRIAL EXAMINER: The issue before me isn't where it went, but if it's closed down. If it's closed down for purposes contrary to the Act.

MR. GRAVITT: Yes, sir.

TRIAL EXAMINER: All right. Now, why do we have to go into a discussion as to where the plant went?

MR. GRAVITT: Well, sir --

TRIAL EXAMINER: The testimony is clear up to this point that the Beckley operation is being served out of the Princeton plant.

MR. GRAVITT: Yes, sir.

TRIAL EXAMINER: Well, what more do we need?

MR. GRAVITT: Well, it relates to this may be a single employer. It can go to the remedy of this situation. One case I think of right off is Darlington. There are several cases.

TRIAL EXAMINER: Oh, you're now trying to drag the Princeton corporation into this for the purpose of a remedy?

MR. GRAVITT: I want to find out how the Beckley setup is over there.

TRIAL EXAMINER: There's no charge of that in the Complaint, is there?

Is there or isn't there?

Oh, well, let's look at the pleadings. If you

can't

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remember I'll look and find an answer to my own question.

(Trial Examiner consulted formal documents.)

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MR. TAYLOR: Mr. H. T. McCoy.

HARRY THOMAS McCOY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give the Reporter your full name and present home address.

THE WITNESS: Harry Thomas McCoy, 111 Waller Street, Princeton, West Virginia.

Direct Examination:

By Mr. Taylor:

Q. Are you --

TRIAL EXAMINER: Proceed.

MR. TAYLOR: Thank you, sir.

By Mr. Taylor:

Q. Are you employed, Mr. McCoy?

A. Yes, sir.

Q. By whom?

A. Pepsi-Cola Bottling Company of Princeton, Incorporated.

Q. What official position, if any, do you hold with that company?

A. Secretary and treasurer.

Q. What official position, if any, do you hold with the Pepsi-Cola Bottling Company of Beckley, Incorporated?

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A. None.

Q. Are you related by blood or by marriage to Mr. H. P. Hunnicutt?

A. No, sir.

Q. I call your attention to October 2, 1962, and ask you whether or not you were in a meeting in Princeton, or conference with Mr. Hunnicutt and with Mr. Sarver?

A. I was in a discussion... It wasn't a prearranged meeting... with Mr. Hunnicutt and Mr. Sarver after there was some discussion of which I was not in with Mr. and Mrs. Taylor the morning of October 2nd.

Q. Would you tell the Trial Examiner what took place there that morning?

A. That morning, early in the morning, I would

say somewhere around 8:00 o'clock, Mr. and Mrs. Taylor was in Mr. Hunnicutt's office in discussion - I was not in there.

When they came out Mrs. Taylor came into my office and she was telling me about - on the day before, Monday, late in the afternoon I was present when Mr. Hunnicutt sent Mr. Taylor to Beckley to do some work on a forklift. And it was near 5:00 o'clock. He turned around and told Mrs. Taylor, "Well, you go along and take inventory," because she objected in a polite way at the time.

The next morning when she came out of Mr. Hunnicutt's office she was telling me that they were over there, meaning

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Beckley; that the men were bellyaching and cussing about the conditions.

Q. Did you go into this discussion with Mr. Hunnicutt and with Mr. Sarver?

A. I listened to Mr. Hunnicutt's conversation. He talked about -- Mr. Hunnicutt called me in there, yes.

Q. All right. Would you tell the Court what was said there by Mr. Hunnicutt, and to whom if you know?

A. Well, Mr. Hunnicutt, after he discussed the situation there, he called Mr. Smith up and told him that he was going to close down the Beckley operation, he wanted to get the stock out, and for him to keep two men, two men of his choice, until that stock was eliminated from the Beckley plant.

And it was a very short conversation. Of

course, I didn't hear anything that Mr. Smith said.

Q. Did you have a discussion with Mr. Sarver and with Mr. Hunnicutt before this conversation that Mr. Hunnicutt had with Mr. Smith?

A. Yes.

Q. Well, tell us what took place in that discussion.

A. Well, it was a general discussion about what Mr. and Mrs. Taylor, the information that they had brought back about the men being very disgruntled, and some of them were cursing concerning the lights, the heat, and the toilet facilities.

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And, of course, then, winter coming on, why, it was the logical thing, anybody with any common sense would know you couldn't keep a plant open with no heat, no lights, and no toilet facilities.

Q. Tell us whether or not the Teamsters Union, or any other union, was discussed that morning before the telephone call was made to Mr. Smith?

A. No, sir; none was ever discussed with me at all.

MR. TAYLOR: You may inquire.

TRIAL EXAMINER: Go ahead.

Cross-Examination:

By Mr. Gravitt:

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Q. Did you know that the Union was trying to get in Beckley?

A. Sure; it was general knowledge all over this part of the country.

Q. What did you know about it, sir?

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A. Well, the first thing I knew about it was from the Beckley newspaper. And outside of that, outside of general knowledge, I don't know anything in particular about it one way or the other, and don't care anything one way or the other.

Q. Was it in the Beckley -- Was it in the newspaper several times, sir?

A. I don't know how many times. I remember seeing it, one write-up, and I think there was another write-up concerning it in the Beckley paper, but I don't think I read it. I don't remember reading it.

Q. Did you discuss it with Mr. Hunnicutt?

A. No, sir, I never discussed nothing.

Q. Did you see him frequently during the day?

A. Everyday he's at the plant I will see him, yes.

Q. But you never had a discussion about the Union.

A. No, sir; it's none of my business. I'm not interested in Beckley.

Q. Did Mrs. Taylor tell you they had decided to close the plant?

A. No, sir.

Q. Did anyone ever tell you that?

A. The only time I heard they decided to close the plant was on October 2nd when Mr. Hunnicutt called up Mr. Smith and told him they was closing the plant. That's the only discussion I

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have ever heard concerning it.

Q. Did he tell him why?

A. He just said he wanted to close the stock out; close the plant. He was going to get rid of the stock. Keep two men there until the stock was completely reduced.

Q. Are you sure he said he was going to get rid of the stock there?

A. Sure.

Q. Reduce the stock?

A. Reduce the stock, or get rid of it, haul it back to Princeton. In fact, in other words, there was a load there, got there, and came back to Princeton without being unloaded.

Q. On October 2nd?

A. No; I don't think it was October 2nd. I think it

was sometime, maybe the 4th, or something like that. I don't remember what day it was - 2nd, 3rd, or 4th. I don't remember what day. You'd have to look at the check sheet. I think they're already in the record, the date.

Q. Is it your testimony that after October 2nd they continued to send stock over to the Beckley operation?

A. There was one trailer loaded. I can't tell you when it was loaded. As I said before, it's supposed to be in this record here, this hearing. It went to Beckley.

Normally, I might explain for the investigation here, that normally you load a trailer, like for instance you're

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going to send a trailer to Beckley; you get a loading list, you have an idea as to what the load is going to be two or three days previous. The trailer will be loaded one day; the trailer will be parked; the tractor driver will come out, he had - he don't have to ask any questions, or he don't have to answer any. He gets on it, and takes off.

Now, there was one trailer that came over here, I don't recall the date, and it turned around and came back. But that date is in the record, as I understand it.

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H. P. HUNNICUTT

a witness called by and on behalf of the Respondent,

resumed the stand and further testified as follows:

TRIAL EXAMINER: Mr. Hunnicutt, you're being recalled to the stand by Respondent's Counsel, and you realize that you're still under oath?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: All right.

Proceed.

MR. TAYLOR: Thank you, sir.

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Q. Now, I direct your attention to October 15 -- May 15, 1962, and I'll ask you to relate to the Examiner the happenings and occurrences in Beckley on that day so far as you know.

A. Mr. Smith called me, I imagine somewhere around 8:00 o'clock in the morning. He told me the men at Beckley refused to go out. I told him I had no power to make them go

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out, and if they didn't want to go out to lock the door and go out collecting. We have twelve to fifteen thousand dollars on the books over there, and get out and collect it up.

And then I'd say in approximately forty-five minutes to an hour he called back, and wanted me to come over.

* * * * *

Q. Well, did they tell you what they wanted?

A. Yeah. They said they wanted - the Number One thing that I had to do, I had to put Dick Heath back to work. That it wasn't his fault because those trucks tore up that way.

And the Number Two thing they wanted - they wanted .-2¢ more a case to deliver Pepsi-Cola.

The Number Three thing they wanted - they wanted

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helpers on the trucks.

The Number Four thing, I believe - maybe they weren't in that order, but this all adds up to what they wanted - they wanted a janitor in the plant, so if they happened to break any glass they wouldn't have to sweep it up, I presume.

The Number Five thing they wanted - they wanted to bring the bottles all back in all mixed up.

That's what they wanted.

* * * * *

Q. Did you talk further, or did they stay or did they go?

A. They told me that they wanted what they wanted By God today, not yesterday or tomorrow. That's what they said they wanted.

Q. Then what happened?

A. I think I made the statement I'd give them until

2:00 o'clock to get back on the job; if they didn't I was going to start hiring replacements.

Q. Did they stay?

A. They got off in a huddle and walked off. And finally the thought occurred to me I didn't know whether they belonged to a labor organization or not. I went over and asked

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them if they belonged to any labor organization.

They said, no, by God, they didn't, but they damn soon would.

Q. Was a picket line established there that day?

A. When they walked out of there, four of them went - got in a car and went somewhere, and three of them went to their automobiles and took boxes out of cards with ON STRIKE already printed on the boxes, out of the backs of the cars.

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Q. Did they contact you on the morning of the 15th, or the afternoon?

A. No, sir.

Q. Did they have anyone do that for them?

A. No, sir -- Well, Mr. Reid Davis called me after - a little while after they left here. He said that a bunch of my employees down there were wanting to join up with District 50. They had told him their story. And he told them to come back up there and go to work, and get on the job, and get the

cart behind the horse like it belonged, and then come back and talk to him about joining District 50.

Q. Did they come back to work?

A. No, sir, they didn't.

Mr. Davis asked me if I would go along with them if he signed them up.

I said, "Mr. Davis, if they want the union it's all right with me."

He said, "Well, when you get your throat well," he said, "I'll give you a buzz, and come back over, and we'll sit back and work it out for them."

* * * * *

Q. Then did you continue to operate from Beckley or did you operate from Princeton?

A. Well, we thought it would be good judgment to pull them out of Beckley long enough for things to cool down.

A little later on Mr. Smith went and talked to Mr. Harris there about the disorder over there, and Mr. Harris told him to come back over here, there would be no trouble out of his boys, is the way I understood Mr. Smith.

Q. And did you go back?

A. Yes, sir. Mr. Harris told us there wouldn't be any trouble. We went back over there.

Q. Was there any trouble?

A. Not to my knowledge, after that.

Q. Did the corporation actually stop business at anytime during the last two weeks in May, or did it continue to operate?

A. No, sir, we never did stop business. It was delivered out of Princeton.

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Q. Did you continue to operate from June up until August, 1962?

A. We did.

Q. Did you operate from Beckley?

A. I believe we came back to Beckley on May 26th, I think.

Q. And then on May 26th until what time did you continue to operate from Beckley?

A. Until the 4th day of October. On the first day of October we came over here, Mr. and Mrs. Taylor, and they came back on the morning of October 2nd and said everybody over here was raising hell from management on down about no lights, no heat, no sewage facilities, and they were trying to work back there with improper lighting, and breaking bottles, and so forth.

And I decided then the only thing left to do was to close it down.

* * * * *

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Q. At anytime did you or did you not tell these men that

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if the Teamsters won you would lock the doors?

A. The only time I mentioned the Teamsters was when I asked this Keffer boy if it was true that someone had called his wife and told her that if she wanted to see him alive she had better get him off that damn Pepsi-Cola truck.

Q. Did he answer you?

A. I made the damn statement that if they thought anything of their God or their country or rights, they'd vote them damn thugs out.

That's exactly what I said, yes, sir. If they thought anything of their God or their country or law and order, I think I said, by God they'd vote them them out, the thugs.

Q. All right.

A. I said by God, that's what they are, because Webster says a thug is an assassin --

TRIAL EXAMINER: Don't explain. Just state what you said, that's all.

By Mr. Taylor:

Q. Was there any discussion by you with them other than that which you have just referred to about the election?

A. Yes, sir, there was.

They wanted to know what would happen if the Teamsters were out-voted.

Q. What did you say?

A. I told them it was my opinion it was just like any

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election. If you was in office and got voted out, you was out; and it would be my opinion if the Teamsters out-voted them, they wouldn't have any jobs, and the Teamsters would go back in.

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Q. I'll ask you whether or not you know whether Kenneth Keffer, one of your route salesman, was involved in an automobile accident while in your employ during July, 1962?

A. Yes, sir, he was.

Q. Did you know that at the time of the meeting in August?

A. Yes, sir.

Q. Had there been --

A. And the time it was - that it happened was on July the 3rd.

Q. Had there been any discussion with him by you about this accident prior to that time?

A. There was. There was, sir.

Q. What did you tell him, sir?

A. Well, I told him that the insurance agent carried the insurance on those trucks. I had a letter from the American Fore Group in Charleston, and I showed him the letter, and I think the contents of the letter was something to the effect --

THE WITNESS: Is that letter in here?

MR. TAYLOR: Yes, sir.

MR. GRAVITT: Mr. Examiner, I would request, sir, that the memory of the witness be exhausted before he refers to notes, and if he doesn't recall this, then I have no objection to him referring to his notes.

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By Mr. Taylor:

Q. Can you --

MR. TAYLOR: Excuse me.

A. Not cold figures, I can't.

TRIAL EXAMINER: Can you remember what the letter said?

THE WITNESS: Well, the letter was to the effect that the insurance company's experience with the fleet and they paid out a lot more money than the premiums

were, and that as a courtesy to the agent that they were continuing that policy with the fleet all around the board; and that they'd better make some effort there to improve the, lessen the number of accidents on the fleet.

By Mr. Taylor:

Q. Was this letter -- Did this letter arrive at your desk before this meeting in August or after?

A. Yes, sir -- No, no; after the meeting. After the meeting.

Q. All right.

A. Which letter are you talking about, now?

Q. The letter from American Fore, or Mr. Murphy.

A. That came before the meeting, yes. That letter there; before the meeting in August.

Q. Did you discuss this matter with Mr. Keffer?

A. I did.

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Q. And you had discussed it before the meeting in August.

A. You mean the letter from the American Fore Group to Mr. Murphy, or the letter from Mr. Murphy to me?

Q. Did you discuss the accident with Mr. Keffer?

A. Yes, sir, we had.

Q. Have you been sued as a result of this accident?
Has the corporation been sued?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. It has.

By Mr. Taylor:

Q. And what is the total amount of the total damages in that action?

MR. GRAVITT: Objection.

TRIAL EXAMINER: Overruled.

A. To the best of my knowledge, I think it's \$285,000.

* * * * *

Q. Tell us whether or not you had any conversation with the Raleigh County Health authorities about the sanitary facilities at the Stanaford Road plant?

A. I did.

Q. When did this take place?

A. When the gentleman from the Health Department came out to the plant to lay out the plans and specifications for a cesspool.

Q. When was this, do you remember, sir?

A. That was prior to May 15; prior to May the 15th. I'd say around May the 10th, 11th, along in there.

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Q. Did he do it?

A. Yes, sir, he did. He nailed it up. Had signs put on it: DO NOT USE.

* * * * *

Q. Tell me, sir, about the lights. Do you have lights in the Stanaford Road plant?

A. They had the lights there that Mr. Cade had strung up when he put in the concrete floor. He had enough light there to run a troweling machine by.

Q. Did you ever see those lights?

A. Yes, sir.

Q. About how many were there?

A. Well, I'd say six would be a maximum that was in there besides - I'm talking about the ware room. There's a couple or three in the office. I'm talking about the ware room.

Q. In the ware room.

A. That's right.

Q. Have any other lights been installed?

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A. No, sir.

Q. What kind of lights do you have in the operation at Princeton, in the warehouse?

A. I don't know. We've got fluorescent lights.

Q. Did you have fluorescent lighting in Beckley?

A. No, sir. We had a bunch of pigtails strung up on a wire through the building.

Q. How long have you been in the bottling business?

A. Since 1926.

Q. In your opinion, sir, was that adequate lighting with which to work?

A. Sir?

Q. Was that adequate lighting by which to work?

A. No, sir.

Q. You relied on the long days and the light of the sun to do the work, didn't you?

A. Well, if they had any light they had it from the sun, because they didn't have it in the building.

Q. Tell us about the heating facilities at the Stanford plant, are there any?

A. Not a bit; not a bit.

Q. There were salamanders, were there not?

A. They had a salamander or two there to dry out the concrete, make it set up quicker, but they had no permission to use that over there. Mr. Cade, I think, too a couple,

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maybe three, I don't know how many he took, to make his concrete set up quicker.

Q. I direct your attention to September 25, 1962 -- 24th, 1962, and ask you whether or not your corporation had a meeting, whether the Beckley corporation had a meeting?

(Witness consulted notes.)

MR. GRAVITT: I object to the witness using notes.

THE WITNESS: I brought these notes to use, and I'm going to use them because I can't remember dates.

TRIAL EXAMINER: Just a minute; just a minute.

Yes.

MR. GRAVITT: The witness' memory has not been exhausted. He asked him this question, and he hasn't answered. He's thumbing through this stack of papers that he's holding, and I object to him looking at his notes before he exhausts his memory.

I also object to him holding this package of notes in his hand here.

TRIAL EXAMINER: What's the package of papers you've got in your hand, generally -- corporate rec-

ords?

THE WITNESS: Yes, sir; corporate records.

TRIAL EXAMINER: Objection overruled

Go ahead and testify.

A. What was the question, Mr. Taylor:

By Mr. Taylor:

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Q. I direct your attention to September 24, 1962, and ask you whether or not you recall that your corporation had a meeting that day?

A. It did.

Q. Was this a meeting of Pepsi-Cola Bottling Company of Beckley, Incorporated?

A. Yes, sir.

Q. Were the stockholders all present?

A. They were.

Q. And who were they?

A. H. P. Hunnicutt, Anne S. Hunnicutt, Geraldine C. Taylor, and John S. Taylor.

Q. Was there notice given of that meeting?

A. Yes, sir.

Q. And was a waiver of notice of that meeting signed by the stockholders?

A. There were.

Q. And all the stockholders were present?

A. They were.

Q. What was the purpose of that meeting?

A. It was to decide to do something about the Beckley corporation.

Q. Was a decision made?

A. It was.

Q. Would you tell us what that decision was, sir?

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A. To close it down.

Q. And that was on the 24th of September, 1962.

A. Correct; the 24th of September.

Q. About this time do you recall whether or not you had any discussions with Mr. Murphy about the Keffer situation?

A. About what?

Q. About the Keffer situation.

A. We did; we did.

Q. What was the substance of those conversations?

A. The conversation in effect was we wouldn't run any trailers on any long runs over a 50-mile radius; we wouldn't work anybody under 21 on them; and we'd make every effort to keep from operating trailers at night.

Q. After you agreed to this with Mr. Murphy did you discuss any of this matter with Mr. Smith?

A. I did.

Q. What did you tell him?

A. I told him that we had discussed the matter with Mr. Murphy, I showed him the letters from Mr. Murphy, and told him that we could not work anyone under 21 years of age due to an unfortunate experience on our insurance.

Q. Did you single out Kenneth Keffer at that time?

A. Sir?

Q. Did you single out Kenneth Keffer at that time?

A. I don't recall. I think Mr. Smith singled him out.

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I told Mr. Smith that I realized that the only way in God's green earth that that boy could have kept from having the accident was just not to have been there at the time it happened.

Q. Did you --

A. And at that time I was under the impression that it was no fault whatsoever of Kenneth Keffer's. And later on the state police ruled that he had left his side of the road, and went through the middle of the road on the other man's side. We were given the information at first that the man coming down had passed a trailer, which he did, and come over on Keffer's side, and Keffer then did just what me or anyone else would have done, he was hunting a hole to get through. I'd have done it myself. I didn't blame the boy.

Q. Did you or did you not tell Mr. Smith to do anything for Mr. Keffer?

A. I told him I would try to do something about it; I didn't know what I could do.

Q. In the meantime did you --

A. That I felt sorry for the boy.

Q. In the meantime did you or did you not tell him to let him go?

A. I told him he had to let him go; had to let him go.

Q. And do you remember about when this was?

A. Well, it was on the night of the 3rd, I think,

October the 3rd - 2nd or 3rd - a couple of days before we decided to close down at that date. It was decided in September to close it, but we prolonged the date from day to day.

Q. Did you not discuss this with him in September about letting him go?

A. Yes, sir.

Q. Tell us whether or not you were under the impression that that order had been carried out?

A. I was under the impression that Kenneth Keffer was no longer an employee of Beckley operation.

Q. Now, I direct your attention to the morning of October 2, 1962, and ask you whether or not you had a discussion with Mr. and Mrs. John Taylor about the Beckley corporation?

A. I do.

Q. What, if anything, did they tell you?

A. Well, they came over to Beckley the night of October the 1st, which was a customary practice everywhere to inventory every thirty days, and if it falls on Sunday, sometimes they'll take it on Saturday and sometimes they'll take it on Monday. It doesn't make any difference so long as you take it. Something was wrong with a fork truck over here at Beckley. I told Mr. Taylor to bring Mrs. Taylor over here at Beckley, and while he was fixing the fork truck, take an inventory.

Q. And did they report to you on October 2?

A. They did, the next morning, yes, sir.

Q. And what did they tell you?

A. Well, the first thing they told me, they had inventoried all except some cases and the empties back in the back, they couldn't see to count them. The next thing they told me, they told me that everybody over here was raising hell because there was no lights, no heat, no toilet facilities.

My impression was it was from management on down.

And they was breaking bottles, and slamming and banging them out there, and it just wouldn't work.

Q. What, if anything, did you do when you learned about that?

A. Well, Mr. Sarver and Mr. McCoy and I were in a discussion on some other stuff in the office, and I asked them what would they do if they were in that condition over here?

Mr. Sarver said he'd close the damn thing down. McCoy said he didn't see anything else to do. You couldn't operate over there without heat; the damn stuff would freeze and bust. A man couldn't have any toilet facilities, no lights to see by. There wasn't no alternative except to close it up.

Q. What, if anything, did you do after this discussion?

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A. I picked up the phone and called Mr. Smith in Beckley.

Q. What did you tell Mr. Smith?

A. I told him to take two men of his choice, to

keep any two men that he wanted, and let four men go over there. Keep two men of his choice over there to close out that stock of merchandise as quick as he could get it closed out. In the meantime if he needed any short items to go along with the stuff that he had there to close it out, to let me know.

Q. To this time had anyone communicated to you of any activity - knowledge of any activity of the Teamsters Union in relation to these witnesses that you heard testify?

A. I had no knowledge whatsoever of any Teamster activity when I told Mr. Smith that, no, sir. I don't think they had either. Because they hadn't been there yet.

Q. You testified earlier, sir, that the trailer which went over to Beckley from Princeton on October 5 had been checked out on October 4. Is that correct?

A. That's right.

Q. There has been testimony here that on that particular trailer there were some no-return or throw-away bottles. Were there any?

A. I didn't quite get that, Mr. Taylor.

Q. There has been testimony here that on that trailerload going to Beckley there were some no-return or throw-away

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bottles. Were there any?

A. No, sir, there was not.

Q. Do you know, and you may use your notes to refresh your memory, do you know of when, or do you know if at all no-return or throw-away bottles were used in the Beckley area by the Beckley corporation?

A. Yes, sir, I do.

Q. When was that?

(Witness consulted notes.)

A. November 21st was the first sale of any no-deposit no-return Pepsis in the Beckley area. Russell Blevins sold eight; James Moore sold three.

By Mr. Taylor:

Q. Is Mr. Blevins presently employed by the Pepsi-Cola Bottling Company of Beckley, Incorporated?

A. Yes, sir, he is.

Q. And does he have a title?

A. He is Route Supervisor; no change in Mr. Blevins' title.

Q. Mr. Smith, does Mr. Smith work for you?

A. Yes, sir.

Q. What is his job?

A. He's Plant Manager over here, and supervisor. General Manager I guess you'd call it.

Q. Is he working for the Beckley corporation at this

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time?

A. Yes, sir, he is.

Q. There has been testimony here, sir, that you authorized Mr. Smith --

MR. TAYLOR: Kill that.

By Mr. Taylor:

Q. There has been testimony here, sir that at your instance Mr. Smith obtained statements from the various witnesses who have testified here about their membership in the Teamsters Union.

I'll ask you whether or not you ordered Mr. Smith, or authorized him to do that?

A. Mr. Smith called me and told me that these men he had let go, plus Keffer and Jackson Brown, Mr. Harris had told him he had signed them up with the Teamsters on Saturday after they had been let go. He wanted to prove it to him by showing him signed statements.

I told him it didn't make any difference to me what he done; do whatever he wanted to do about it. It didn't make any difference to me what he done.

Q. Were the statements ever received by you or by anyone else in the corporation?

A. I have never seen any statements from any-

body regarding whether they did or whether they didn't belong to and Teamsters, or anything else. I haven't seen them. They

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were never brought to me.

Q. Last week you testified about a call that you received from Robert Jackson; you testified that that was on October 1, or 2. He testified that it was on October 8 or 9.

Have you any recollection as to when that took place?

A. Yes, sir; it was later on about October 8th, or 9th or 10th, along in there. He was right. He was right about that. Somewhere between, I'd say the 7th and the 10th of October.

Q. There has been testimony here, sir, that you called Jackson Brown and Ronald Keffer to Princeton on October 10, 1962.

Did you or did you not?

A. I did not call them over there, no, sir.

Q. Were they there?

A. They came over.

Q. Do you know why they came?

A. They came over to try to get me to put them back to work. I told them we had closed the thing down, had to close it out. I told Ronald Keffer that if we ever got straightened out back over here he would

be the first in line for employment, if we ever got to where we could open it up again.

Q. Mr. Brown testified you offered him employment at the Pepsi plant in Princeton.

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Did you or did you not?

A. I asked him if he would come over here and go to work. He said he wasn't interested. He just weren't interested.

I also told him why we had to close the Beckley plant down. We couldn't bring stuff over here and let it freeze and bust.

Q. Do you recall Jackson Brown's offering to install any lighting in the warehouse in Beckley?

A. I do.

Q. Was that an occasion or several occasions?

A. Well, I'd say it was a couple of times he hit me up to put the lights in the Beckley warehouse.

Q. Do you remember the first time?

A. Yes, sir.

Q. When was that?

A. I don't remember the date. I remember the first time of his making the offer.

Q. Do you remember about the time of year?

A. Along in the fall, late fall.

Q. 1962.

A. That's right.

Q. What was your answer to him?

A. He said he was a qualified electrician, or something to that effect; that he'd be glad to come back there at night

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and put those lights in. I asked him if he belonged to the Electrical Workers Union over here. He said no. I said, "Can you get in it?"

He said, "No, I've tried." He told me they had all the electricians they needed over in this area. "They wouldn't give me a membership in it."

I told him I had had enough headaches over here from Mr. Zeigler circulating bulletins and things about this building being built over here with non-union labor, and I certainly wasn't going to have any more of it. He couldn't put the lights in.

* * * * *

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Q. What region of the Pepsi-Cola Company does the Pepsi-Cola Bottling Company of Beckley, Incorporated operate in?

A. The Washington region.

Q. Does your company receive monthly and yearly reports from the Washington region which will indicate to you your

position with respect to other companies in the area?

A. Yes, we do.

Q. Do you receive that report?

A. Yes.

Q. Do you have any of those reports with you?

(Witness consulted notes.)

A. Washington Regional Section Sheet for December, 1961.

Q. And do you have others?

A. I do.

Q. Would you tell us your monthly and yearly position for 1961?

A. This is for 1961, December. The Beckley operation had a, for 1961 had a + 21 for the month of December over December of '60; and overall total a +2 for the entire year.

Q. Two points better in '61 than it was in '60.

A. Yes.

Q. Would you tell us the rating at the end of 1962?

A. For the month of December the Beckley operation had a -34, for the month of December, 1962; and a -14 for the year to date.

* * * * *

Q. If you were going to run out the stock in any location, how would you go about doing that?

A. I would do my deadlevel best to keep cutting down, picking up empties is a long drawn out affair, running out stock. You've got to keep every item on your trucks because some people will want this, and some will want that. You can't just have one brand. When you've got seven or eight or nine different lines, you've got to have some of everything. It's a slow process of whittling it down. You don't do it overnight. You have to keep whittling down, and cutting down until you get it all out.

Q. Would you use other merchandise to lead that remaining stock out, or would you just --

A. You'd have to have other merchandise to run the stock out. You have to have it. Number One, the men were on commission, and if they didn't have enough to balance it out, you'd get hell out of them. It had to be balanced out

that way. That's the only way you can balance it out.

Q. When was the first time in October that you had knowledge of Teamster activity at the Beckley plant?

A. Saturday night, October 5th.

Q. If October 5th was a Friday night, was it on a Friday night as opposed to Saturday?

A. Whatever the 5th was. The day after October

4th, Thursday, the end of the payroll period. It was Friday.

Q. Was that before or after your employees had been terminated over there?

A. It was after four of them had been terminated. I told him to keep two of them and help him close out the stock. There was two of them there.

Q. And this was before or after there only remained two of them there to run out the stock as far as you know?

A. I didn't quite get it.

Q. And when you learned of the Teamsters activity was it before or after there remained only two for the purpose of running out the stock so far as you know?

A. You mean did I learn after that the Teamsters had signed up all the employees after there was just two there?

Q. Uh huh.

A. That's right; yes, sir. I'll amend that to say after I told Mr. Smith to cut off four of them, to keep two of his choice.

* * * * *

Cross-Examination:

By Mr. Gravitt

* * * * *

Q. Are the routes being serviced as frequently now as they were in '62?

A. Practically the same frequency, yes, sir; practically the same frequency. They vary very little one way from the other. One route may get a little more frequent service now, or they may get a little less. But there's not a great deal of difference in the frequency of the routes serviced now and then.

* * * * *

Q. Were you renting the facility?

A. Sir?

Q. Were you renting the facility you were using at that time?

A. I didn't hear you.

Q. Were you leasing or renting the facilities?

A. Renting; renting; renting the facilities.

Q. On a monthly basis?

A. Yes, sir.

* * * * *

Q. Is it your testimony, Mr. Hunnicutt, that the Union had nothing in this world to do with you closing the plant?

A. The Union had nothing to do whatsoever with the way I conducted the operation in Beckley, not one little bitty thing; not one little bitty bitty thing; not one thing.

Q. Did you not testify earlier that you called Frank Rebhan and asked him to remove the pickets?

A. I did.

Q. And what was that date?

A. That was on the 1st of October, Monday.

Q. Were you concerned with the Union at that time?

A. I was concerned with heat in the building. I asked him to remove the pickets so I could get a man to cross that line and put heat in the building. I was concerned with some activity in Parkersburg, which has got nothing to do with this case whatsoever. I was concerned with trying to get heat in it.

Q. You wanted to get the pickets out of the picture. Is that your testimony?

A. I didn't want the pickets out of the picture. I wanted to get a man across the line some damn way or another to

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put heat in that building. I asked him if he had any suggestions.

Q. Who did you -- or what efforts did you make to get heat in the building?

A. Well, nothing only buy the boiler, and the radiators, and have a man ready to come. I had a deal made with him to come and put it in ever since the spring before.

Q. When did you buy them?

A. I don't recall the date. I'll have to go to the records to get that. Prior to May the 15th, though.

* * * * *

Q. You don't have any idea what a vending machine would cost?

A. Yes, sir, I know about what --

Q. Approximately what would it cost?

A. They will go anywhere from 350, 450, 550, \$600.00 according to size.

Q. How many did you order for this area over here?

A. I don't recall how many I ordered.

Q. 50?

A. I think maybe in that neighborhood; close to that, more or less, give or take, but I'm not going to make any positive statement how many I ordered.

* * * * *

Q. Why were you willing to work it out with

District 50 and not willing to work it out with the Teamsters?

A. Why should I work out anything with the Teamsters?

* * * * *

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Q. When did you find out that the Teamsters represented a majority of your employees, the replacements?

A. That's in October?

Q. Yes, sir.

A. It was - Thursday was October the 4th. That's when the payroll period ended - and it was Friday afternoon, late at night, October 5th.

Q. How did you find out?

A. Mr. Smith called me.

Q. What did he tell you?

A. Mr. Harris wanted to take him down and have him show him these signed slips before anybody - a preacher, or a doctor, or a lawyer, or a justice of the peace, whatever it was.

I told him I didn't care what he done.

Q. You didn't care that he represented the majority of the employees?

A. That's right. I asked him to find out if those

four men were in it that we had laid off on Thursday morning. I was primarily interested in that.

* * * * *

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Q. Well, on October 4th had you made a decision not to work with the Teamsters?

A. I hadn't made any decision not to work with the Teamsters. My decision was on October 2nd, that it was an

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impossible situation, and that's when we started resolving the issue there, and getting - trying to close it out. Any idiot knows you can't operate a bottling plant without heat in the wintertime. A stark idiot know better than that.

Q. I'd like to ask you about this season business here.

A. Maybe that's just one of my characteristics. About --

Q. Was it due to cold weather or other reasons?

A. Primarily it was the knowledge that the cold weather was going to catch us with our pants down over here one morning, with three or four hundred dollars worth of drinks froze. That would be the prime factor in closing that thing down in October, yes, sir.

Q. Now, did you have any drinks to freeze in October, sir?

A. I don't recall. We had stuff to freeze on trucks in October out of Princeton. And I think there's some Crush that froze over there in October. I couldn't be positive of that. It was cold enough to freeze in the building without heat.

Q. In the Beckley plant it was cold enough to freeze without heat?

A. Yes, sir; it was cold enough to freeze without any heat.

Q. But did you not have sufficient heat there to --

A. We didn't have any heat.

* * * * *

Q. When did you take them out?

A. Along right about - right after we went and got the last load of drinks, which was around the 15th or 16th of October is the way I recall it.

Q. They were used up until the 10th, were they not?

A. They said they used them, but I didn't know they were using them.

* * * * *

Q. Do you dispute the fact that they were being used?

A. I won't dispute it, and I won't admit it, because I

don't know. I don't know whether they used them or

not. I wasn't over there. I didn't see them burning; I didn't see them not burning. I don't know whether they used them or whether they didn't. I heard some of the boys state they used them. I won't deny they used them, because they say they did.

Q. Now, there's been earlier testimony that the drinks were to be transported from Princeton to Beckley by way of a trailer for this operation.

A. Yes, sir, they done that. There's no question about that.

Q. Well, how long was that practice to continue, Mr. Hunnicutt?

A. Well, I'd say the economic conditions would govern that answer. I can't give you that answer.

Q. Well, then, freezing didn't govern it.

A. That, too. You couldn't put drinks in that building unless you had heat in it. You couldn't do it.

Q. Now, is it your testimony, Mr. Hunnicutt, that drinks would freeze quicker in the building than traveling 42 miles over here on the highway to service this area?

A. We don't look at it your way.

Q. Sir, I just asked you a question.

A. In the morning the sun come up and you can transfer drinks when the temperature gets about 20 degrees. You can

bring them over and put them in that building for a

night and the temperature will drop to zero, and you'll have a bunch of popsicles the next morning without heat. That's what'll happen to you. You can haul them in the daytime on the truck later, when it gets up around 20 degrees, cover them over with tarpaulins and come on. Put them in that building at night and let it drop down to zero, and you'll have some nice popsicles the next morning.

Q. Now, in operating the -- in servicing this area from Beckley, are not drinks on the trucks a longer period of time than they would be if they were serviced out of this warehouse in Beckley?

A. How was that, now?

Q. When you drive the truck, for example take Smith's truck coming out of Princeton to service this area --

A. Yes, sir.

Q. -- are the drinks on that truck, on there a longer period of time with the present setup than they would be if they originated out of the Beckley plant?

A. Why sure, they would be on there longer, sure; absolutely they'd be on there longer.

* * * * *

Q. You mentioned a visit to the plant, about a representative from the Raleigh County Health Department.

A. Yes, sir.

Q. Do you recall that?

A. I recall it, yes, sir.

Q. And he told you -- What did he tell you?

A. He told us how to put the thing in out there.

Q. Put what in?

A. Septic tank, and the drains away from it.

Q. Didn't you put in the septic tank?

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A. We put it in, the tank part, yes, sir; yes, sir.

Q. What's the capacity of it?

A. Oh, I'd have to do a little figuring. I could measure it if you wanted me to in the morning and come back and tell you. I can't tell you here, though. I can figure it up and tell you what the capacity of it is.

Q. Had it backed up in the plant?

A. It had backed up, yes, sir.

Q. In the restroom?

A. No, it didn't back up in the restroom; it run out on the yard, outside the plant. It was built on one of those things you build of square blocks, and your flushings from the toilet come into the box. Then you've got to put dispersal lines away from that and bury them down in the ground, and about eight or ten

inches of rock under that pipe. And that refuse is supposed to go down there and soak down in the ground.

He told me to get that all done and call him and he'd come out and inspect it, and then we could cover it up. Not to cover it until he come and inspected it.

Q. He wanted to see these lateral beds installed. Is that right?

A. He wanted what?

Q. Lateral beds, or whatever term you used, feeding to the septic tank. Is that --

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TRIAL EXAMINER: No; feeding out of it.

Q. Feeding out of it.

A. To my knowledge, there's not a one of them in, no, sir; not a one. He might have started one pipe out of the septic tank, maybe two, but the best I remember there's about 200', 250' of those lines which should have went in the ground, 18" down on a bed of rock 6" deep. And then when that was all laid out there he was to - we was supposed to call this gentleman, I don't remember his name - I can get it for you if you want it, though.

Q. Did you ever call him?

A. No, I didn't call him, because I never did finish it for him to inspect.

Q. But you continued to operate using it.

A. I didn't operate it, no, sir.

Q. Your employees did.

A. These fellows were advised not to operate it, not to use it, but they kept using it, yes, sir.

Q. They used the facilities.

A. In direct violation of my orders and Mr. Smith's orders.

TRIAL EXAMINER: I think that's enough of that. Go on to the next subject.

* * * * *

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Q. Now, directing your attention to this October conference - this conference you had on October 2 --

A. With who?

Q. Mr. Sarver and Mr. McCoy, was it - do you recall that?

A. Yes, sir.

Q. Was it in the Princeton plant?

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A. Yes, sir.

Q. I believe this was the time that you called Smith. There's been testimony to that effect.

A. That's correct.

Q. Now, who was there?

A. Who was what?

Q. Who was present?

A. Mr. McCoy and Mr. Sarver.

Q. And had you talked with Mr. and Mrs. Taylor?

A. Prior to that, yes, sir.

MR. TAYLOR: Your Honor, I may be mistaken, but I believe he's inquired about this already. It's outside his cross-examination.

TRIAL EXAMINER: I'm not sure. I would suggest that you make it as brief as possible.

Go ahead.

A. (Continued) Now, what was --

By Mr. Gravitt:

Q. Is Mrs. Taylor an officer in the Beckley corporation?

A. Yes, sir.

Q. Is Mr. Taylor?

A. Yes, sir.

* * * * *

Q. You testified here, Mr. Hunnicutt, that you

had a meeting of the stockholders on September the 24th.

A. We did.

Q. Did you make any notes or minutes of that meeting?

A. Sir?

Q. Did you make any notes or minutes of that meeting, sir?

A. Yes, sir, we had minutes of the meeting.

Q. Do you have them here with you?

MR. TAYLOR: We do, and you've seen them.

MR. GRAVITT: May I see them again, please? I would like to ask the witness about them.

(Document handed to Counsel for General Counsel)

MR. GRAVITT: Thank you.

MR. ZAZZALI: Your Honor, I object to the two gentlemen speaking while this gentlemen is still on the stand.

TRIAL EXAMINER: Yes; I don't think you ought to talk to your Counsel while you're on the stand.

THE WITNESS: Sir?

TRIAL EXAMINER: While you're on the stand you

shouldn't talk to your Counsel. to your Counsel.

THE WITNESS: I'm not going to.

Oh - him? I didn't know.

By Mr. Gravitt:

Q. Sir, I show you a document here which is entitled MINUTES OF SPECIAL MINUTES OF STOCKHOLDERS -- SEPTEMBER 24, 1962, signed by Geraldine C. Taylor, Secretary.

(Document handed to witness.)

A. Yes, sir.

By Mr. Gravitt:

Q. Have you seen that before?

A. Yes, sir.

Q. Where did you see it?

A. I saw it over at the office.

Q. Does this reflect the actual events that took place at the meeting?

A. If it didn't it wouldn't be in the records.

Q. Is Mrs. Taylor an officer in the corporation?

A. It says Secretary there, don't it?

Q. Yes, sir. Was she directed to prepare this minutes?

A. She prepared them upon what happened at the meeting. That's her job - secretary - keep up with the minutes.

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Q. Is it an accurate reflection of what took place at the meeting?

A. If it wasn't accurate it wouldn't be in my books; if it wasn't accurate it wouldn't be anywhere in our records. We don't make it a habit of putting anything false or inaccurate in our records.

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MR. GRAVITT: I ask that General Counsel's Exhibit 4 be admitted into evidence.

MR. TAYLOR: I have an objection, your Honor.

TRIAL EXAMINER: Do you object?

MR. TAYLOR: Yes, sir.

TRIAL EXAMINER: On what ground is your objection?

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MR. TAYLOR: The ground of my objection is there has been testimony here about it, both at the instance of questions I've asked and the questions that Mr. Gravitt has asked; that had he wanted to put it in evidence, and had he told me that was the reason for it, I would not have shown it to him. I have a serious objection about the Government of the United States or any other government being able to put people's records in evidence when they're not germane

and I don't want that, I just don't want it in.

* * * * *

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Q. Well, how much pay did he receive for that period, sir?

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A. That period there?

Q. Yes, sir.

A. \$82.16.

TRIAL EXAMINER: What's the period?

THE WITNESS: Sir?

TRIAL EXAMINER: What is the period?

THE WITNESS: September 13th.

I took 518 cases and I think that's where I divided six into that.

TRIAL EXAMINER: This is September 13th, '62?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: 518 cases, and how much money?

THE WITNESS: \$82.16.

By Mr. Gravitt:

Q. Now, that \$82.16, was that broken down into

95 cases at .10¢?

A. 651 cases at .04¢, 518 cases at .09¢, 95 cases at .10¢.

Q. That represented Jackson Brown's work for the week that ended on September 13th.

A. That's right; that's right.

Q. Thank you.

That 95 cases there at .10¢ represents 16-ounce Pepsi. He got a penny more for selling it than he did for the 12-ounces.

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Now, for the period that ended October 4, 1962, how much was he paid?

A. \$79.65.

Q. And what's the breakdown on that?

A. 633 empties at .04¢, 488 cases at -- 12 ounce at .09¢; 105 cases 16 ounces at .10¢.

Q. And on October the 9th, which is a partial workweek, is it not?

A. It looks to me like it is; yeah.

Q. And --

A. Listen, fellow, I feel bad. There it is; you can read it. Hell, it's as plain as the nose on your face. You can read, I know. There it is. What do you want to ask me that for?

TRIAL EXAMINER: Well, you'll have to answer the questions, Mr. Hunnicutt.

THE WITNESS: Well, alright.

A. (Continued) That's 266 empties at .04¢; 226 cases 12 ounces at .09¢; 20 cases 16 ounces at .10¢.

Q. And how much pay?

A. \$33.88.

Q. Now, directing your attention, sir to July the 5th, 1962, did Mr. Brown receive \$58.31?

A. He did.

Q. And what was the breakdown on that?

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A. 394 empties at .04¢; 344 cases at .09¢; and 105 cases at .10¢.

* * * * *

Q. On July 26th, sir, was he paid \$45.84?

A. That's correct.

Q. Give us the breakdown.

A. 371 empties at .04; 270 cases at .09; 67 cases at 10¢.

* * * * *

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Q. How many times did Jackson Brown offer to

install the lighting facilities?

A. Twice, to my knowledge.

Q. In the new plant?

A. Twice, to my knowledge.

Q. Did he tell you that he had had experience in that type work?

MR. TAYLOR: Your Honor, repetitive. Mr. Gravitt has been at it several times, and so have I.

MR. GRAVITT: It goes to the credibility of this witness, your Honor.

TRIAL EXAMINER: Overruled.

A. I believe he made the statement he was a qualified electrical man.

By Mr. Gravitt:

Q. Why didn't you let him do the work?

A. I made the statement once, I'll make it again for you.

Q. Thank you, sir.

A. I told him that I had my belly full of the damn Beckley Area Labor Council circulating bulletins in Princeton that this building was built with non-union labor, and I didn't want any more of it. That's exactly the answer I gave him.

* * * * *

Q. You decided to close the plant on October 2nd, but then you sent more trailerloads of products from Princeton to the Beckley plant. Is that correct?

A. We sent stopgap merchandise, and to help close out what was already there, yes, sir, to have the full line on the trucks.

Q. I show you, sir. Respondent's Exhibit 1.

(Document handed to witness.)

By Mr. Gravitt:

Q. And I ask you if this wasn't a full load for the trailer?

A. It was.

* * * * *

Q. I'm talking about this load, sir. Now, did you decide for this load to return to Princeton after you talked

to Mr. Smith about the Teamsters?

A. I did. I'd had my belly full of it.

* * * * *

Q. Do you know when Kenneth Keffer got married?

A. No, I don't.

Q. Had he not worked in the warehouse to some

extent, sir?

A. I don't know.

Q. Is it your position that the accident he had on July 3rd was not his fault?

A. I was given to understand that it wasn't his fault from Mr. Smith, but I believe I made the statement that the state police decided otherwise.

Q. And then you decided to discharge him over the accident.

848

A. I didn't discharge him.

Q. Did you have Mr. Smith discharge him due to the accident?

A. We had to let him go. We couldn't work him and keep our truck insurance; we couldn't work him and keep our truck insurance with him under 21.

Q. Did you discharge Kenneth Keffer because of the accident --

A. No, sir.

Q. -- on July 3rd?

A. We discharged him because we couldn't work him under 21.

Q. You couldn't work him where?

A. Anywhere.

Q. You couldn't work him in the plant, not going out on the truck?

A. We could have worked him in the plant if we had had any plant to work him in, yes.

Q. Did you offer him a job in the plant?

A. I don't remember offering him any job in the plant because I didn't intend to have any plant of offer him a job in.

Q. How long did you let him drive the truck, or permit him to drive the truck after the accident?

A. I don't know how long; Mr. Smith will have to answer

849

that. I wasn't over here.

Q. Did you ever give instructions to fire him before October?

A. Sir?

Q. Did you give any instructions to Smith, or anyone, to fire Keffer --

A. We discussed it in September, yes, sir.

Q. Sir?

A. It was discussed in September when Mr. Murphy got the letter from the America Fore, and on October 4, which was another thing that helped bring this to a head we got the letter from Mr. Murphy about hiring anybody under 21 years of age.

Q. That related to the operation of the trucks, though, did it not?

A. That's right.

Q. It did not --

A. Strictly the trucks.

Q. Sir?

A. Strictly truck operation.

Q. Nothing whatsoever to do with the plant.

A. Sir?

Q. Nothing whatsoever to do with your plant?

A. The plant wasn't discussed at all.

Q. Did you know that Mr. Smith told him that he was

850

discharged on October the 5th because of the accident?

A. All I know is I told Mr. Smith prior to October the 4th that we couldn't work him; and I informed Mr. Smith to so inform Mr. Kenneth Keffer that we couldn't work him due to his age, and due to the insurance complications on those trucks.

Q. What did you tell him to do about it?

A. I told him to let him go. That's what I told him. Prior to October the 4th.

Q. Did you not testify earlier that you felt sorry for him?

A. I did, and I do. I felt sorry for him. But sympathy in business - I can't keep insurance on

on trucks and let sympathy interfere with it, and I sure can't run them without insurance.

I made a misstatement there - I said you can't run them without insurance. You can run them without it, but you're going to be sorry if you do sometime or other. I'll have to rectify that statement a little bit.

* * * * *

Q. You testified earlier here that on October the 2nd you had no knowledge of the Teamster activity at the Beckley plant.

A. That's true.

Q. That's not an accurate statement, is it, Mr. Hunnicutt?

A. Yes, it's a true statement. Other than the involvement to these former employees, so far as these last employees were concerned, I made the statement that I had no knowledge of it, and I didn't have, because there was no activity until Friday night, according to what they tell me. How could I have any knowledge of it --

TRIAL EXAMINER: All right. Don't argue; don't argue. You've answered the question.

By Mr. Gravitt:

Q. Did you ever doubt that the Teamsters had a majority of the employees signed up, Mr. Hunnicutt?

A. What was that, now?

Q. Did you ever doubt that the --

A. You want to know -- If you want to know the truth, I didn't know what kind of a shape they was in, and furthermore I didn't care, because it didn't matter to me.

Q. You were going to close it down regardless. Is that

853

your statement?

A. We were going to close it down, yes, sir, regardless of Teamsters, no Teamsters, U.M.W., no U.M.W. We intended on October the 4th to make that the final pay period and keep two men there to help Mr. Smith and Mr. Blevins close the thing out.

Now, there was no union activity involved then. So far as I knew, there was none; so far as I knew, there was absolutely no union activity when that decision was made, regardless of the damn lies that's been sworn to on the witness stand here.

Q. Well, now, directing your attention to October 10th, do you recall telling Ronald Keffer that if you ever got things straightened out that he had a job if he wanted it?

A. I certainly told him that, yes, sir. If I ever got on business over here and was ever able to operate over here and got this building finished, I asked him if he would consider working - coming back to work. He told me that was according to where he was then and what he was doing at the time. Yes, sir, I told Ronald Keffer that if we ever got straightened out over here, and ever got the building straightened out

and could operate, I asked him if he'd come back to work for me. And he said he would; it would be according to where he was and what he was doing at the time, that I got straightened out.

854

Q. Did you ask Brown to work in Princeton?

A. He was asked to work over there, and he refused - Jackson Brown, yes, sir. He was offered a truck out of the Princeton operation.

Q. You, also, testified that you could not let the stuff freeze and bust.

A. That's right.

Q. Now, when you moved in your new building did you take that element of this into consideration?

A. You'll have to say that again.

Q. When you moved into your new building in '62, did you take into consideration that your stuff would freeze and bust?

A. I didn't think about that, nor nobody else would have thought about it.

Q. Well, what about this boiler over here in Princeton? Were you going to use it?

A. Yes, I was planning on putting the boiler in, going ahead with the heat, yes, sir. That was my plans.

Q. When did you decide not to go ahead?

A. I didn't make that decision. I didn't make any decision not to go ahead and put the heat in. Other people made it for me.

Q. Well, when was it made?

A. Mr. Phillips made that decision. He had a deal, and

855

I had a deal. He even bought the radiators himself over at Gary at a good price, and I agreed to let him put the heat in over there. Mr. Phillips had belonged to District 50 over in Gary, the United Mine Workers, and he told me that he would not come over here and cross this picket line and put it in. I would have just felt like a heel if I had used them radiators and my boiler after him buying them, and then paying somebody else, giving somebody else the work. And so when that happened I wrote it off. That's what happened on the heat.

Q. When was that?

A. Sir?

Q. When was this?

A. Oh, I wouldn't pin that down to a date. That was several discussions with Mr. Phillips about the heat; several discussions about the heat.

Q. Do you still have the boilers?

A. Sure I've still got the boiler. I'll bring you a picture of it if you want it.

Q. Do you plan on using it over here at some

future date?

A. I don't have any plans whatsoever for Beckley; no plans whatsoever. I have no plans in my mind right now.

* * * * *

862

Q. Right down here, sir, at the bottom of the page where it says jobbing - right across from it - what is that, sir - \$53,000.00 - \$53,177.72?

A. That's cost of sales. Your jobbing -- that's your purchases.

TRIAL EXAMINER: Let me see the document.

(Document handed to Trial Examiner)

A. (Continued) That's your purchasing for jobbing. That's not sales down there; that's cost of sales. That down there would represent all the Pepsi-Cola that came from Princeton the last six months. That's what that is. They had to job it from Princeton. That's what they were charged for it when they got it over here.

By Mr. Gravitt:

Q. This is the cost the Beckley corporation paid the Princeton corporation?

A. Yes, sir.

Q. For the last six months?

A. I don't know what all is in there besides the

drinks that came from Princeton. I'd have to have it broke down, but I'd say the major proportion of it is drinks from Princeton.

Q. For the last six months of 1962.

A. Whatever they got during that year. I don't know

863

how much it was. The whole year would be in that. It would have to be.

* * * * *

865

Q. Was that \$52,000.00 item considered in arriving at this \$31,000.00 item --

866

A. Yes, sir; yes, sir, it was considered. That is purchases from Princeton; part of it anyway. I won't say it all is. But had they not purchased the merchandise from Princeton, they would have had to run their purchases for manufacture, practically the same amount - that's the statement I made. There's no loss incurred over getting this stuff from Princeton.

* * * * *

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Q. Now, Mr. Hunnicutt, did you believe that negotiating with the Teamsters would seriously affect the cost of your operation of your company?

MR. TAYLOR: I object.

TRIAL EXAMINER: Don't answer.

MR. TAYLOR: I object.

TRIAL EXAMINER: Go on to the facts. Cross-examine on the facts.

By Mr. Gravitt:

Q. Did you ever have any discussion with the Teamsters about working conditions?

MR. TAYLOR: I object to that, your Honor. It's indefinite.

TRIAL EXAMINER: Objection sustained.

By Mr. Gravitt:

Q. Did you ever announce to the, or inform the Teamsters that you were closing the operations here in Beckley?

MR. TAYLOR: I object, your Honor. He is under no duty to do that. And it's irrelevant to this matter.

TRIAL EXAMINER: Overruled.

Answer the question.

A. No, I didn't inform anybody.

MR. GRAVITT: No more questions.

Redirect Examination:

By Mr. Taylor:

Q. A few moments ago you were asked --

MR. TAYLOR: Excuse me.

MR. ZAZZALI: No questions.

TRIAL EXAMINER: No questions? All right.

By Mr. Taylor:

Q. A few moments ago you were asked by Mr. Gravitt about whether or not Mr. Smith told you on October 5 that the Teamsters represented a majority of the Beckley corporation's employees.

I ask you now whether or not at the time you got that information from Mr. Smith that as far as you knew the employees you had over there were Russell Blevins, Pete Smith, Ronald Keffer and Jackson Brown, and no others.

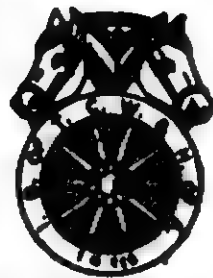
A. That's exactly right.

* * * * *

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APPLICATION BLANK



International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, Local Union 178
CHARLESTON . . . WEST VIRGINIA

Name _____

Lodge No. _____

Obligated _____

Initiation Fee \$ _____

Date 10-4-1962

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I hereby make application for admission to membership. I hereby authorize you, or your agents or representatives to act for me as exclusive bargaining agent on all matters pertaining to rates of pay, hours, or any other condition of employment.

Signature Dallas Milam Sec. No. 235-60-9383

Address Crab Orchard, W. Va. Date of Birth July 22, 1939

Employed at Pepsi Cola, B.C. Bldg. Co. Classification Driver

Chauffeur License No. _____ Secretary Dallas Milam

Relationship of Beneficiary Mother

GC 2A

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APPLICATION
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International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, Local Union 175
CHARLESTON • • WEST VIRGINIA

Name _____

Lodge No. _____

Obligated _____

Initiation Fee \$ _____ Date 6:30 P.M.
10-5 1962

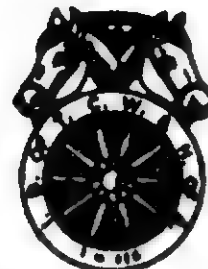
Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I hereby make application for admission to membership. I hereby authorize you, or your agents or representatives, to act for me as collective bargaining agent on all matters pertaining to rates of pay, hours, or any other condition of employment.

Signature John D. Smith Sec. No. 236-66-9168
Address 215 Hedrick St. Date of Birth 10-23-42 No. 2594163
Employed at Pepsi-Cola Bottling Co. Job Classification driver
Chauffeur License No. 10-10 Beneficiary Mrs. Audrey D. Smith
Relationship of Beneficiary Mother

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Name _____

Lodge No. _____

Obligated _____

Initiation Fee \$ _____ Date 12 6:30 PM 1962

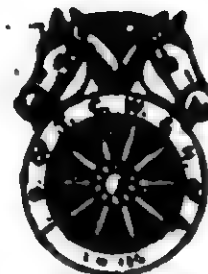
Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I hereby make application for admission to membership. I hereby authorize you, or your agents or representatives to act for me as collective bargaining agent on all matters pertaining to rates of pay, hours, or any other condition of employment.

Signature James W. Brown Sec. No. 219-20-1482
Address Box 205 The Meadows Date of Birth 6-29-26 Tel. No. _____
Employed at Payroll Co. 1000 1/2 N. 1st St. Charleston Relationship Wife
Chauffeurs License No. _____

410

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International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, Local Union 175
CHARLESTON - WEST VIRGINIA

Name _____

Lodge No. _____

Obligated _____

Initiation Fee \$ _____

Date ^{6³⁰} 10-5-1962

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I hereby make application for admission to membership. I hereby authorize you, or your agents or representatives to act for me as collecting bargaining agent on all matters pertaining to rates of pay, hours, or any other condition of employment.

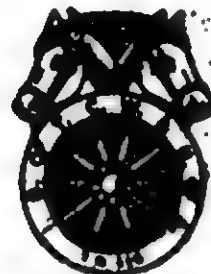
Signature: Bill Tuckey Soc. Sec. No. 992-52-8937
Address: 114 College Ave. Dayton, Ohio 45425
Employed at: Bill-Cala Job Classification: designer
Chauffeur License No. _____ Beneficiary: Wife

Relationship of Beneficiary wife

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International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, Local Union 178
CHARLESTON - WEST VIRGINIA

Name _____

Lodge No. _____

Obligated _____

Initiation Fee \$ _____

Date ^{6:30 PM} 10-5-62 19 _____

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I hereby make application for admission to membership. I hereby authorize you, or your agents or representatives to act for me as collective bargaining agent on all matters pertaining to rates of pay, hours, or any other condition of employment.

Signature Donald Kaffer

Sec. No. 232-64-4825

Address 112 Mercer St.

Date of Birth Oct 2, 1940

Employed at Pyramid Coal Co., 1400

Classification Plant Engineer

Chauffeur License No. _____

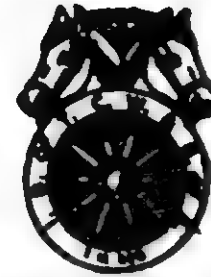
Beneficiary My wife, Dora Kaffer

Relationship of Beneficiary Wife

412

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International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America, Local Union 175
CHARLESTON • • WEST VIRGINIA

Name _____

Lodge No. _____

Obligated _____

6:30 PM

Initiation Fee \$ _____ Date 10-5-19 62

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, I hereby make application for admission to membership. I hereby authorize you, or your agents or representatives to act for me as collective bargaining agent on all matters pertaining to rates of pay, hours, or any other condition of employment.

Signature Harold D. Kiffin Sec. No. 235-64-5226

Address 112 Mason St. Buffalo, N.Y. Date of Birth June 28 - 1924 No. _____

Employed at Liquid Carbon Buffalo, N.Y. Job Classification rough laborer

Chauffeurs License No. _____ Beneficiary Maude Kiffin

Relationship of Beneficiary Wife

25 100 11 30

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Phone: CLifford 3-4631

Phone: CLifford 3-8380

JOE RODRIGUEZ
Justice of the Peace
Town District
213 1-2 Prince Street
Beckley, West Virginia

11 October, 1962

TO WHOM IT MAY CONCERN:

This is to certify that I have checked the signature and the Social Security of the following and found them to be true and exact-----these names checked were on applications for THE TEAMSTERS UNION-

BILL LUKACH
JOHN DAVIS
JACKSON BROWN
KENNETH KEFFER
RONALD KEFFER

Respectively yours,

s/ Joe Rodriguez

MINUTES OF SPECIAL MEETING
OF STOCKHOLDERS

September 24, 1962

The special meeting of the stockholders of Pepsi-Cola Bottling Company of Beckley, Inc. was held on the 24th day of September 1962 at the office of said corporation in Princeton, W. Va. at 10:00 o'clock A. M. pursuant to a written waiver of notice signed by all stockholders fixing said time and place.

All stockholders were present.

Anne S. Hunnicutt, President, acting chairman of the meeting advised concerning the Teamsters Union activity at the plant, and not being able to install heat and proper lighting in the plant due to picket line of the Teamsters Union, it is impossible to operate from this plant.

After general discussion, it was, upon motion duly made by John S. Taylor, Jr., seconded by H. P. Hunnicutt, and unanimously carried, it was

RESOLVED, that sales and service would not be carried on from the plant, and the plant would be closed October 1, 1962.

There being no further business, the meeting was adjourned.

s/Geraldine C. Taylor

Secretary

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

PEPSI-COLA BOTTLING
COMPANY OF BECKLEY, INC.

and

Cases Nos. 9-CA-2716
9-RC-4997

CHAUFFEURS, TEAMSTERS &
HELPERS LOCAL UNION #175,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

Cassius B. Gravitt, Jr., Esq., for
the General Counsel.

Kay, Casto & Chaney, appearing by
Frank L. Taylor, Jr., Esq., all of
Charleston, W. Va., for the
Respondent.

James R. Zazzali, Esq., of Washington,
D. C., for the Union

Before: Eugene F. Frey, Trial Examiner

INTERMEDIATE REPORT AND REPORT ON OBJECTIONS TO ELECTION

The issues in this case are whether Respondent, Pepsi-Cola Bottling Company of Beckley, Inc., (1) shortly before a Board-conducted election in Case No. 9-RC-4997 made coercive remarks to its employees which warrant the setting aside of the election, (2) by the same and other conduct before and after the election coerced employees in the exercise of their rights under Section 7 of the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151, et seq. (herein called the Act), in violations of Section 8(a)(1) of the Act, (3) terminated operations at its plant and discharged certain employees because of their union activities, in violation of Section 8(a)(3) of the Act, and (4) refused to bargain collectively in good faith with the above-named Union as the statutory bargaining representative of its employees in an appropriate bargaining unit, in violation of Section 8(a)(5) of the Act. These issues arise on a complaint issued December 14, 1962, by the Board's Regional Director for the Ninth Region in Case No. 9-CA-2716, 1/ and an order issued by said Regional Director on the same date in Case No. 9-RC-4997, directing a hearing on certain objections to election and consolidating both cases for hearing, and answer of Respondent denying the commission of any unfair labor practices, and asserting certain affirmative defenses.

1/ The complaint issued after Board investigation of charges filed by the Union on October 15 and November 27, 1962.

A hearing on the issues was held before the undersigned Trial Examiner at Beckley, West Virginia, on various dates between February 12 and 26, 1963, in which all parties participated through counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to adduce pertinent evidence and to make oral argument and file briefs, proposed findings of fact and conclusions of law. All parties waived oral argument but submitted briefs to the Trial Examiner.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Respondent's Business

Respondent is a West Virginia corporation which has been engaged in the bottling and distribution of carbonated beverages from a plant in Beckley, West Virginia. During the year 1962 Respondent had a direct inflow of goods and materials valued in excess of \$50,000 to said plant directly from points outside West Virginia. Respondent admits, and I find on these facts, that Respondent is and has been engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

During the events described herein, H. P. Hunnicutt was the executive vice president, a director and stockholder of Respondent, and Kyle C. Smith was sales manager and Russell Blevins route supervisor at its Beckley plant. Each is a supervisor within the meaning of the Act. Hunnicutt is also a director and stockholder and holds the same official position in three other Pepsi-Cola bottling concerns with plants located at Princeton, Alderson and

Parkersburg, West Virginia. 2/

II. The labor organization

The Union named in the caption is a labor organization within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. The labor dispute of May 1962, and
the representation proceeding

Some time before May 15, 1962, a labor dispute arose between Respondent and employees at its Beckley plant, in course of which a majority of the employees designated the Union to act as their bargaining agent, went on strike on May 15 to enforce their demands, and continuously picketed the plant through October 1962. 3/ As a result of the strike, the plant was shut down almost completely for a few days, but Respondent hired replacements for the strikers within the next 2 weeks and resumed full operations about June 1, 1962. On May 21, 1962, the Union filed a petition with the Board in Case No. 9-RC-4997 for certification as bargaining representative of the employees. Pursuant to a Direction of Election of August 1, 1962, a secret-ballot

2/ For convenience, these corporations will be called the Princeton, Alderson, and Parkersburg corporations.

3/ At the time of the hearing herein, that dispute was still pending and undetermined. The Union filed unfair labor practice charges claiming violations of Section 8(a)(1), (3) and (5), of the Act by Respondent on the basis of certain events in that dispute, but the Board refused to issue a complaint.

election was held on August 31, 1962, which the Union lost. The Union filed timely objections to election. The Regional Director aforesaid directed a hearing on charges that Vice President Hunnicutt made coercive threats of reprisal and promises of benefits to employees on August 29, 1962, 2 days before the election, to induce them to vote against the Union. These charges are also in issue in Case No. 9-CA-2716 pending before me now. The events of August 29 will now be discussed.

B. The August 29 meeting at Princeton

After the strike began, the employees were well aware of the labor dispute, as they crossed the picket line daily. Those who were hired on and after May 15 knew that they were replacements for the strikers. 4/ In the weeks before the election, the employees discussed among themselves and with Manager Smith the effect on their jobs if the Union won the election, and they realized that if the Union won, some of them might lose their jobs if the Union procured reinstatement of the strikers. They had also talked to Smith about the possibility of improvements of working conditions, equipment and compensation if they remained at work after the election, and had expressed a desire to talk to Hunnicutt on that subject. Smith reported this to Hunnicutt, who agreed to talk to the employees at his office in the plant of the Princeton corporation on August 29, 1962. Smith and Blevins drove six

4/ These replacements were Kenneth Keffer, Jackson D. Brown, Jack Goad, William Lukach, Dallas Milam and John Davis.

of them to Princeton that evening. 5/ Milam drove over alone in his truck after finishing his route, arriving at the Princeton plant about 7 p.m. (the meeting was scheduled for 8 p.m.). As he was reloading his truck, Hunnicutt drove in and talked to Milam. He told Milam of his experiences with the Union at the plant of the Parkersburg corporation (where the Union was the recognized bargaining representative of employees under a contract with that corporation), said the employees there were not satisfied with the Union and had often asked him to help get "those damn thugs" out of that plant, and none of the employees at the Princeton plant wanted to have anything to do with the Union.

The seven employees conferred with Hunnicutt that evening for about an hour in the presence of Smith, Blevins, James H. Sarver, son-in-law of Hunnicutt and president of the Princeton corporation, and Irwin H. Bird, an employee of the Alderson corporation. At the outset, Hunnicutt mentioned the coming election, and told the employees that if they thought anything of their God and their country, they would "vote the damn thugs out of Beckley," adding that "they" had ruined him, that the men knew how sales at Beckley had fallen off, and no one was to blame but the Union and the former employees who had "walked out." Brown asked why District 50, United Mine Workers, was not on the ballot. Hunnicutt said he did not know, that Brown would have to contact Davis of the UMW

5/ Brown, the two Keffers, Davis, Lukach and Jack Goad.

about that. 6/ He also said that if the employees wanted another union, or signed a contract with the UMW, he would "consider it," but that he would not "work under the Teamsters." Hunnicutt asked the drivers about their sales. They replied that sales were better since the strikers had quit following their trucks and talking to customers. Hunnicutt said he had heard about a threat by someone to the wife of Ronald Keffer, who verified that the threat had been made. Hunnicutt commented that that was the way the Teamsters operated, "like a gang of thugs." He also accused the Union and the strikers of trying to sabotage bottled drinks at Beckley, and he and a supervisor made other disparaging remarks about the way the Teamsters generally operated in their organizing and bargaining activities. When some drivers complained that their sales were still not as good as they wanted, Hunnicutt said he knew the drivers had been having a "pretty tough time" at Beckley, that the Beckley operation had been under a "handicap," but that "if you vote the Teamsters out" and "things get settled," Respondent could help improve sales for the drivers. Supervisor Blevins asked for more advertising at Beckley, because he had promised it to customers. Hunnicutt said about \$1,900 was available

6/ Some of the workers hired during the strike had applied for membership in the UMW during May and later months, but were told by Davis that his organization could not take them in while the Union was "in it."

for advertising at Beckley, but that he would not put out any money for that purpose as long as the Union was there, as he could not afford to spend more money there and "have it ruined," but would use it only if the Union lost the election. One worker complained that he had to use a cart with bad wheels, several employees complained about the lack of uniforms, and others asked what they would have to work with if the Union lost the election and they stayed on the job. After Hunnicutt queried Sarver about the uniform arrangements at Princeton, and learned that the employer and employees there split the cost, Hunnicutt told the men that the same arrangement would be made at Beckley, and they said that was satisfactory. Regarding the various complaints, Hunnicutt said that if the Teamsters were voted out and "the thing is settled", he would get them new equipment if needed, use advertising to help them increase their sales, and pay half their uniform costs. He also said that if the Union won the election, he would close down the plant, and lock the doors, because he would not operate the plant "under the control of the Union." One employee asked how the Company would help them to get back certain large customers, like the A & P and Kroger supermarkets. Hunnicutt said he could not do anything about that "until this mess is settled." At least one employee asked Hunnicutt what would happen to their jobs if the Union won the election. Hunnicutt replied that, like any union, this Union had "their ins and their outs," that "someone is elected and someone loses," and that in his opinion if the Union won the election, the Teamsters would come into the plant, the strikers would get back their jobs, and the employees would

be without jobs. 7/

C. The events of September and October

There is an economic background to the events of September and October preceding the plant shutdown which might well be stated here. During 1961, Respondent had been operating its bottling, storage and distribution operation in an old, rented building in Beckley. As this had become inefficient and inadequate, Respondent in the fall of 1961 began construction of its present plant on a site previously purchased by Hunnicutt. Respondent moved into the new building during March, April and May 1962, but limited its operations there to storage and distribution of soft drinks. 8/ When the picketing began in May, the shell of the plant was completed to the extent that it could be used as a warehouse during warm weather, but the general contractor had not completed installation of the septic tank and associated ground lines connected with the toilet facilities,

7/ The above findings are based on a synthesis of credible and mutually corroborative testimony of Brown, Hunnicutt, Smith, Blevins, Sarver and Bird, as corroborated in part by testimony of the two Keffers, Milam and Lukach. Testimony of any of these witnesses in conflict with the findings is not credited. The findings as to the separate talk of Milam with Hunnicutt are based on credited and uncontradicted testimony of Milam.

8/ During 1961, Respondent decided for economic reasons not to bottle drinks in the new location, but to service the warehouse with products transported from the bottling plant of the Princeton corporation, 40 miles away. Respondent secured permission from the Pepsi-Cola Company to vary its franchise in order to operate in this way for 3 years.

and other contractors had not installed permanent heating and lighting systems. When the pickets appeared, the general contractor refused to cross the picket line to finish the septic system, and the heating and electrical contractors refused to proceed with their work, although Respondent had both heating equipment and lighting fixtures available for installation. Consequently, the outdoor portion of the toilet system was never finished, and up to the hearing that system had not been inspected or finally approved by local health authorities.

There was no adequate heating system in the plant; it contained only one or two portable oil stoves, or salamanders, which had been used by the contractor when pouring and finishing the cement floor, and which were usable by the employees only to take the chill off the air on occasional cool mornings. The only lights in the building were a few temporary strings of unshaded bulbs left by the contractor, which were still powered by a portable power plant used by him during construction.

1. The plant shutdown

On September 24, 1962, the stockholders of Respondent held a special meeting at Princeton at which they formally authorized the closing of the Beckley plant on October 1, because the Union's picket line there had prevented the installation of heat and proper lighting, making it impossible in their view to operate further from it. On October 1, Mr. and Mrs. John S. Taylor, Jr., officers and stockholders of Respondent, went to the Beckley plant to take monthly inventory. That same day Hunnicutt had occasion to talk to one Frank Rebhan, another agent of the Union with whom the Parkersburg corporation

has dealings under a collective-bargaining contract. Hunnicutt called to ask Rehban for suggestions on marketing problems in the area serviced by that corporation, but in the discussion he asked for Rehban's help in removing the pickets at Beckley long enough to enable Respondent to put in proper heating equipment there to prevent freezing of bottled drinks during the coming winter. Rehban refused any help, saying the pickets would remain at Beckley all winter long. He also refused to give Hunnicutt any suggestions about the Parkersburg problem. On the morning of October 2, the Taylors reported to Hunnicutt at Princeton that they found the employees dissatisfied, complaining about lack of heat and poor lighting, and that they were mishandling products and breaking bottles due to lack of light. Hunnicutt decided to close down the plant, but first asked the opinions of Sarver and Harry T. McCoy, an officer of the Princeton corporation. Both suggested that, without heat, proper light or toilet facilities, they would shut it down. Hunnicutt immediately contacted Smith, telling him to lay off the employees on October 4, the end of the pay period, but to keep two men of his own choice to "run out the stock." Smith protested that he did not think he could do the job with only two men; Hunnicutt's reply does not appear.

On October 2 or 3, Smith intimated to some employees that there might be a layoff. On the morning of the 4th, when Milam returned to work after an absence, Smith asked him jokingly who he was. Milam replied "one of those Pepsi-Cola route salesmen." Smith rejoined, "former route salesman." Milam asked what he meant, and Smith said Hunnicutt had been "raising hell" about the Teamster activities at the plant, that there "might be trouble for the men working", that Hunnicutt might close

the plant up, but he was not sure. Smith sent Milam out on his route, saying he would talk to him that evening. During the day Respondent received a letter from its insurance carrier regarding limitations on its drivers (which will be discussed later), on the basis of which Hunnicutt advised Smith that he could no longer employ Kenneth Keffer as a driver. When Milam and other drivers returned to the plant that evening, Smith told them and the other employees that Hunnicutt had told him to lay off all the men but two of his own choice, and that he had not decided which two to retain. He told Kenneth Keffer that he had to let him go because of his past accident. The employees suggested that Smith keep the two men with greatest seniority. After he and Blevins discussed it privately, Smith told them he would keep Brown and Ronald Keffer, 9/ and that others (Milam, Wardenski, Lukach and Kenneth Keffer) should go home but check with Smith the next day or so, as he did not know what Hunnicutt was going to do about the Union, but he "hoped we can get this thing straightened out" and that they "might be able to go back to work". Before Ronald Keffer left the plant, Smith told him to tell his brother, Kenneth, to report for work the next day. After leaving the plant, Milam telephoned Hunnicutt and reported what Smith had told the men. Hunnicutt asked Milam if he was sure that he was laid off, intimating that perhaps Smith would not lay him off. Milam said he was not sure. Hunnicutt said that he should not worry about it, that he would call Smith

9/ Ronald Keffer had the most seniority, but Brown was number 3 in that respect; Kenneth Keffer had been hired about 2 weeks before Brown, but became a route salesman several months after Brown.

and see what they could work out. Milam returned to the plant to find out if Hunnicutt had called Smith about him. On learning that he had not, Milam sought out Kermit H. Harris, business agent of the Union, told him about the layoff and joined the Union that evening. Milam, Wardenski, Lukach and Davis were laid off that afternoon, at the end of the pay period, and received their final pay, except Milam and Davis: Davis got his final pay the evening of the 5th, when he came in for his check after an illness, and was notified of his layoff; Milam got his check from Smith on Saturday, October 6, at which time Smith remarked that all the men had joined the Union, and he did not know what happened, but he hoped "they might get something worked out," and suggested that Milam check with him later, that "maybe we can get you back to work."

The two Keffer s and Brown worked on Friday, October 5. About 5 p.m. that evening, Harris visited the picket line at the plant. About 5:30 p.m., Brown, Lukach, the two Keffer s and Davis talked to Harris at the picket line, and all signed Union authorization cards at 6:30 p.m. Kenneth Keffer and Brown had finished their work for the day but Ronald Keffer had not, as he still had to unload a trailer. Harris told him to go back and do it. About this time, Smith came out of the plant, and asked Harris what was going on. Harris told him he had signed up the employees for the Union, and represented them, and wanted to negotiate a working agreement for their future employment, but that they were not refusing to work. Ronald Keffer asked Smith if he should unload the trailer. Smith asked both to wait while he called Hunnicutt. Smith telephoned Hunnicutt, reported what Harris had said, and asked what he should do. Hunnicutt asked him which workers had signed up, and Smith

said, "all of them." Hunnicutt asked if this included those Smith had laid off Thursday night. Smith said he thought they were included. Hunnicutt told him not to worry about it, that it was after quitting time and he should let the men go home, and that he (Smith) should reload the trailer for return to Princeton. Smith then told the group that Hunnicutt had told him to send the men home, and to unload the trailer himself. Harris and Ronald Keffer reminded Smith he still had Ronald "on the clock." Smith then punched out Keffer's card himself. Harris asked if he wanted the men to report for work as usual on Saturday. Smith replied that those scheduled to work should report (meaning Ronald Keffer and Brown.) The men then left the plant, but Harris remained and asked Smith if he wanted the signatures on the authorization cards checked by a clergyman or other responsible citizen. Smith replied, "If you tell me you got them, that is good enough for me". 10/ Harris then left, and Smith reloaded the trailer.

Smith then called Hunnicutt and reported Harris' suggestion. Hunnicutt indicated that he had no objection to verifying the cards, if Smith wanted to do it, but also suggested that Smith procure signed statements from the employees showing their affiliation with the Union, for purposes of comparison with their cards.

10/ Smith admits he had no reason to doubt Harris' word, for he says the five men had told him just before they left the plant, that they had signed up.

When Brown and Ronald Keffer reported for work Saturday, October 6, Smith told them they could not start work until he had called Hunnicutt. Smith tried in vain to reach Hunnicutt several times, and finally told the two that Hunnicutt wanted their union authorization cards verified by a Justice of the Peace, and he would have to get in touch with Harris about that, also that Hunnicutt wanted signed statements from them indicating whether they had signed authorization cards. Brown, the two Keffers, and Davis then wrote and signed statements that they had signed up with the Union at 6:30 p.m. on the 5th, and gave them to Smith, before Harris arrived. Smith then told Ronald Keffer to go to work, and Keffer did so, working until about 11:30 a.m. Brown did not drive his truck but helped Keffer in loading a truck. Smith again told Davis during the morning that he had been laid off. When Harris arrived, Smith told him that Hunnicutt was agreeable to having the union applications verified. They agreed to have it done by Joe Rodriguez, a local Justice of the Peace. Before going to his office, Harris suggested that Smith procure samples of signatures of the employees, with their social security numbers, for comparison with the numbers and signatures on their applications. Smith procured the numbers from the office as well as the signed statements of the employees. They took both sets of documents to the magistrate who compared the signatures, told them the cards were genuine, and told Smith he could have Hunnicutt call him to verify that fact as a witness. He also wrote and signed a certificate that he had checked and verified the signatures and social security numbers of Lukach, Davis, Brown and the two Keffers and found them genuine, and gave the certificate to Harris. Harris then told Smith he would be available at his home over the

weekend for a talk with Hunnicutt, and asked that Hunnicutt call him to indicate what he wanted to do, as the men were getting impatient and wanted to get "something settled." Just before Ronald Keffer left work that day, Smith gave him Kenneth's paycheck and told him to give it to his brother and to tell him that Hunnicutt had told Smith to lay him off on account of his accident. 11/

Smith reported Harris' remarks to Hunnicutt that evening, but their conversation does not appear in the record. On Sunday, the 7th, Smith advised Harris by telephone that Hunnicutt did not want to talk to Harris, as he had nothing to talk about, and that Harris could do what he wanted.

On Monday morning, October 8, Milam reported at the plant to see if he could get work. Smith was talking on the telephone to Hunnicutt as Milam walked in, and Smith asked Hunnicutt if he should send Milam out on a route. Hunnicutt told Smith, "no, lay him off," so Smith told this to Milam. That morning, Smith told Harris he had orders to send Ronald Keffer and Brown on the road and that he and Blevins would also make deliveries, and that he was to lock the plant up. The four took out loaded trucks that morning, and the plant was locked up in their absence. The same men worked and the same procedure was followed on Tuesday, the 9th. That afternoon Smith told Brown and Keffer that Hunnicutt wanted to see them at Princeton on the morning of the 10th.

11/ Kenneth did not work that Saturday, as he was getting married that afternoon, and Smith let Ronald off early to go to the wedding.

On the evening of October 9, Robert D. Jackson, an agent of the Union, telephoned Hunnicutt, said his employees had joined the Union, their applications had been verified, and asked that Respondent recognize the Union as their bargaining agent. Hunnicutt replied that Respondent was closing down the plant because it could not be operated without heat, light or proper sanitary facilities, and that the Union was to blame for this, because Rehban had refused to remove the picket line so that contractors could put heat in the building, that it had "ruined" him, that the employees had come to the Union after they were laid off, the Union had signed them up after they were no longer employees, that an election had been held, and that he did not intend to deal with the Union.

On the morning of the 10th, Blevins drove Ronald Keffer and Brown to Hunnicutt's office, where Hunnicutt told them he was closing up the Beckley plant because it was impossible to operate there during the winter due to lack of heat and light; he also mentioned that employees had been using the unfinished sanitary system. He told them they could "thank the Teamsters for the plant being closed down", that the Teamsters had put him out of business at Beckley, and "someone was going to pay for it." Shortly after, Hunnicutt in a private talk with Keffer repeated that he had to close the plant for lack of heat, that drinks might freeze there and the bottles burst, and that the plant did not have enough electric lights to work by. He told Ronald that he had talked to the insurance agents about Kenneth's accident, trying to "clear it up some way," and expressed regret that Ronald had not brought Kenneth along to discuss it. Hunnicutt asked Ronald if he would work for him again if he ever decided to open up the Beckley plant, and Ronald said he would.

Hunnicuttt said that if Respondent ever got the dispute straightened out so that it could open the plant again, Ronald would be first in line for a job. Hunnicutt also talked privately with Brown, repeating the lack of heat and light and the Teamster activities as the reason for the shutdown. Brown offered to put in lights for Respondent at the plant at night, saying he was a qualified electrician. Hunnicutt asked if he belonged to the Local Electrical Workers Union. Brown said he did not. Hunnicutt asked if he could get membership in it. Brown replied that he had tried, but could not get in. Hunnicutt said he could not let Brown install the lights, as he had enough headaches from the local building trades union which had circulated reports that the plant had been built with nonunion labor, and he wanted no more of that trouble. Brown asked if Respondent would service the Beckley area out of Princeton. Hunnicutt replied that, as far as the employees at Beckley were concerned, that plant was finished. He offered Brown work at the plant of the Princeton corporation if he desired, but Brown said he was not interested in that.

The Beckley plant has never been reopened, and the laid-off employees have never been recalled by Respondent. Since October 10, 1962, Respondent has continued to service the Beckley area by an average of five trucks which are loaded at and operate out of the Princeton plant; two are driven by Smith and Blevins, the others by Princeton drivers who normally service part of another county adjacent to Beckley. 12/

12/ The above findings are based on credible and mutually corroborative testimony of witnesses of General Counsel and Respondent. Testimony of any witnesses at variance therewith is not credited.

Contentions of the Parties and Concluding Findings

1. The August 29 meeting

I find from the facts relating to the May dispute and the circumstances under which employees were hired during that dispute that, prior to the election, they were seriously concerned about the outcome of the election on the security of their jobs and improvement of their working conditions, and that, in the words of Smith and Blevins who had discussed this matter with them often at Beckley, they came to Princeton to ask Hunnicutt two questions: what would happen to their jobs if the Union won the election, and what improvement in working conditions they could get if the Union lost and they retained their jobs. Answering the first question, Hunnicutt made it clear that, like any election, one side won and the other lost, and that if the Union won, it would probably try to get reinstatement of the former employees who were on the picket line, which would mean ouster of the present employees. As Hunnicutt was thus forecasting a possible outcome of the election, which confirmed what the employees already suspected and feared, I do not think his remarks were coercive or violative of the Act. However, his remark that if the Union won the election he would close the plant and lock the doors, because he would not operate under control of the Union, was a thinly veiled threat that if the employees did not vote the Union out, they would in effect lose their jobs. This violated Section 8(a)(1) of the Act. Although the employees asked about improvement of working conditions if the Union lost, Hunnicutt's reply was clearly that if the Union lost, he would get new equipment and uniforms for them

and would release budgeted funds for more advertising, but that he would not do these things unless the Union was voted out. These remarks clearly amounted to a coercive promise of benefits if the employees voted against the Union, and a threat to withhold them if they voted for the Union, and thus violated Section 8(a)(1) of the Act. 13/ As these remarks were made to all employees in a group just 2 days before the election, such conduct clearly tended to interfere with the conduct of the election, and requires that it be set aside. I shall so recommend. 14/

2. The layoff of October 4, and
shutdown of the 10th

The complaint alleges and the General Counsel contends, that Milam, Lukach, Ronald Keffer, Brown and Davis were illegally discharged and the plant was shut down from antiunion motives on October 10. General Counsel does not contend that the layoff of Wardenski, Milam, and Lukach on October 4 was unlawful. It follows that the motive for that action was likewise legitimate. The record supports this conclusion. The circumstances of construction of the present plant and Respondent's transfer of operations to it early in 1962 shows clearly that it was a bona fide economic decision;

13/ I find nothing violative of the Act in other remarks of Hunnicutt to Milam and the group in which he disparaged the Union and its method of operation, and urged employees to vote against it.

14/ Cf. Dal-Tex Optical Company, Inc., 137 NLRB No. 189; Marsh Supermarkets, Inc., 140 NLRB No. 83

the only change from past operation was the cessation of the bottling operation and procurement of soft drinks from the plant of the Princeton corporation, which were distributed from the new Beckley plant as warehouse and distribution point. This decision and modus operandi did not change with the advent of the strike in May. Aside from temporary interruption of operations at the outset, which Respondent offset by servicing the Beckley area for a few days directly from the Princeton plant, Respondent took legitimate steps to resume operations by hiring replacements for the strikers. Though the strike prevented Respondent from finishing the new plant by installation of proper heating and lighting, and completion of sanitary facilities, that did not prevent normal use of the warehouse during the warm months of 1962, when days were long enough to enable employees to work without electric lights during occasional overtime periods in the evening. Despite the picket line, Respondent carried on its business in this fashion, though with reduced volume, into early Fall. However, the approach of winter and freezing temperatures presented a serious problem because, as Hunnicutt indicated, there was serious doubt whether Respondent could get the necessary heating and lights installed while the picket line was in evidence. Credible testimony of Brown and Hunnicutt convinces me that Respondent desired to finish that work with union labor, rather than using nonunion labor and risking further adverse publicity and possible trouble from the building and trades union. Since union contractors and workers refused to cross the picket line, this problem obviously motivated the preliminary corporate decision of September 24 to close down October 1. However, Hunnicutt did not take steps to exercise this authority until he made one try to secure the Union's cooperation to

enable him to prepare the plant for winter operation. When that failed and he learned of the unsatisfactory operating conditions at Beckley, and after getting advice from close associates in the other bottling corporations, he gave the order to Smith to make the layoff and retain only enough men to close out the stock. I am satisfied that this action was taken reluctantly and was forced upon him by the circumstances created by the Union's activity. Both the decision to shutdown and the layoffs of October 4 and 5 implementing it were legitimate, for they came before any employees joined the Union or Respondent had any knowledge that they had done so.

Respondent claims that these terminations were permanent discharges for economic reasons. General Counsel does not argue that on these dates the strikers were still employees, or that the Union represented any employees before Wardenski, Milam, Lukach, and Davis were laid off, but contends that these four were still employees in a temporary layoff status, and that all but Kenneth Keffer were finally discharged when the plant was shut down on the 10th, after Respondent knew all but Wardenski had joined the Union. It is clear from testimony of Hunnicutt and Smith that the order for the layoff of all but two at the end of October 4 had been given on October 2, and that Hunnicutt thought on the night of the 5th that the order had been carried out, but that Smith "dragged his feet," as Respondent puts it, in the case of Kenneth Keffer, because he knew he would have trouble operating during the "close-out" with only two employees, and he wanted to retain Kenneth for an "inside" job if he could. I am convinced that is why Kenneth was not finally notified of his layoff until the 6th. Smith told those laid off (except Davis) both before and after their layoff that he hoped to have them back at work, if

and when the dispute with the Union was settled. Hunnicutt expressed the same hope and desire to Milam when he called Hunnicutt on the 4th, and to Ronald Keffer and Brown on the 10th; in Brown's case, he went further by offering him a job at the Princeton plant. While these remarks were not a definite promise of recall at a specific or implied future date, but were contingent upon possible settlement of a labor dispute which had dragged on for nearly 5 months, and there was nothing to indicate to the employees that the dispute would ever be settled, much less at an early date, I am constrained to conclude that Respondent's repeated remarks showing a desire and strong hope of recalling the employees sometime later are enough to denote that they had a reasonable or substantial expectancy of recall. Hence, I conclude that Milam, Lukach, and Davis 15/ were "employees" in a temporary layoff status with a reasonable expectancy of recall, within the meaning of the Act, when they joined the Union. 16/

15/ Davis did not testify. Although he was not present at the layoff announcement of the 4th, and apparently was not told by Smith when laid off on the 5th, that Smith hoped to get him back to work, it is a reasonable inference that, if present on the 4th, he would have been included in Smith's hopeful remarks. Hence, I conclude that he must also be considered an "employee" with reasonable expectancy of recall, after the 5th.

16/ See General Medical Supply Corp., 140 NLRB No. 68, at page 2.

3. The refusal to bargain

It follows from the above findings that, just before five employees joined the Union on October 5, Milam, Lukach, Davis, both Keffers, and Brown were still employees of Respondent, and that after the five joined up, the Union represented a majority of employees of Respondent in the following unit which I hereby find to be appropriate: all drivers and plant employees at Respondent's Beckley plant, excluding all office clerical employees, guards and supervisors as defined in the Act. 17/ The Union made a proper request for bargaining for employees in said unit on the night of the 5th, again on the 6th and 8th. Respondent refused to bargain with it through Smith's remarks to Harris on the 7th, and Hunnicutt's remarks to Jackson on the 9th. Respondent's sole defense for the refusal is that at least five in the unit (Milam, Lukach, Wardenski, Kenneth Keffer and Davis) should have been laid off on the 4th, and as Hunnicutt assumed they were, he thought the Union did not represent a majority on the night of the 5th. This defense is without merit, of course, because of my finding that those laid off were still employees, in a temporary layoff status, when the Union made its first demand for bargaining on the 5th. 18/ I therefore find and conclude that Respondent has failed and refused since October 7, 1962, to bargain in good faith with the Union as the statutory bargaining representative of its employees in the appropriate unit, in violation of Section 8(a)(5) of the Act.

17/ At the close of the pay period on October 4, Respondent had eight employees in said unit: the six who joined the Union plus William Wardenski and trailer driver James Meadows.

18/ If Smith disobeyed orders in not laying off Kenneth Keffer on the 4th, Respondent is still responsible for his acts, as he was the main supervisor at the plant.

4. The procurement of statements from employees

I find no violation of the Act in Respondent's procurement on October 6 of signed statements from employees showing their union affiliation. Hunnicutt made the suggestion that Smith procure the statements only after learning that Harris had suggested a verification of the union card signatures, and after Smith told him all the employees, including those whose layoff had been ordered, had joined the Union. Hunnicutt's testimony indicates, and I find, that after he learned the last fact, he felt that the Union lacked majority status, hence he had no ulterior interest in the card check, but went along with the Union's suggestion for verification by allowing Smith to get the statements for that limited purpose. There is no proof that the statements were given to Hunnicutt or that Respondent used them for any other purpose, and at least one employee, Ronald Keffer, indicated in testimony that he knew when he gave his statement to Smith that Smith and Harris would use them for the card check. In light of these facts, Hunnicutt's suggestion that the statements be procured and Smith's statements to the employees that Hunnicutt wanted them, does not indicate an illegal purpose or that procurement of the statements had a coercive effect. I shall therefore recommend that paragraph 5(c) of the complaint and such other portions thereof as allege that procurement of the statements was unlawful, be dismissed.

5. The October 10 shutdown

The next question is, whether the layoff of Brown and Ronald Keffer and actual closing of the plant on the 10th amounted to a discriminatory discharge and lockout of all the employees. General Counsel argues the affirmative, relying on (1) Hunnicutt's coercive threat of August to close the plant if he had to deal with the Teamsters in any way, (2) his remark to Smith sometime before the election that he was prepared to close up the plant if the Union won the election, 19/ (3) the sudden layoff of the employees on October 5 and 6 without prior warning or formal layoff notices, and (4) his final remarks to the last two employees on the 10th that the Teamsters had "ruined" him, were the cause of the shutdown, and "someone was going to pay for it." General Counsel also claims that Respondent's conduct toward the Union during the May labor dispute also shows a fundamental antiunion animus, which was reflected repeatedly in the later remarks and circumstances cited above.

At the outset, I find no significant antiunion animus in Respondent's conduct during the May dispute. The record shows that when the disgruntled employees went on strike and sought affiliation with the UMW, and that organization contacted Hunnicutt, he raised no objection to their union affiliation and was willing to discuss their grievances with that union, while insisting that they return to work, or he would have to hire replacements. He followed that course, and when the Union shortly sought to bargain as the representative of the

19/ I find this statement from admissions of Smith.

strikers, Respondent refused on the ground that they had been replaced and were no longer employees. On investigation the Board refused to issue a complaint on a variety of charges filed by the Union. Nor do I consider it significant that Respondent made the layoff without specific advance notice or formal layoff or discharge notices, for the record clearly shows that it was never Respondent's practice to follow any formal procedure in making layoffs or discharges which involved advance or formal notice. In any event, I find that the employees had clear notice of an impending layoff and possible shutdown, from Smith's intimation to some before and on October 4 that the Union's activity might cause a layoff, and his citation of the same reason to six employees the night of the 4th when he announced the layoff of all but two. The size of the announced layoff alone was clear evidence to them that drastic action was impending.

However, Hunnicutt's coercive remarks to the employees on the 29th, and his indication to Smith before the election that he would close the plant if the Union won, as found above, and his testimony that he had nothing against this union except the way it "organized" and "the way they done over here at Beckley," clearly indicated animosity toward the Union generally as a labor organization. This impels a close scrutiny of the October shutdown to ascertain whether that fundamental dislike of the Union effectively motivated that action. Smith's remarks early in October to some employees that Hunnicutt was "raising hell" about the Union's activity and that the plant might shut down susceptible of that inference, as are Hunnicutt's remarks to the two employees on the 10th noted above, particularly the remark that "someone was going to pay for the "ruination" of the Beckley

operation caused by the Union, which can be construed as indicative of retaliation. While Hunnicutt's preelection remark to Smith noted above is deprived of some force by the lack of a union victory at the polls, it still evidences a fundamental aversion to recognition of the Union, which is also shown by Respondent's unlawful refusal to bargain with the Union as found above, even though that was the result of Hunnicutt's wrong assumption that he had finally terminated a majority of his employees in the appropriate unit by the afternoon of the 5th, before six of them joined the Union. These circumstances present a prima facie case of discriminatory motive for the shutdown, which required Respondent to go forward with substantial evidence to rebut it.

It is clear from the corporate action of September 24 which prepared the way for the shutdown, and Hunnicutt's remarks to Brown and Ronald Keffer on the 10th, in the light of the facts cited above showing why the building was incomplete, that the shutdown was mainly caused by the Union's continued picketing activity, which had prevented Respondent from "winterizing" the plant for operation during the coming months. I find from credible testimony of Hunnicutt and admissions of General Counsel's witnesses, that the plant was far from adequately lighted for wintertime operation, and that lack of heat was a serious obstacle to its use as a warehouse and distributing point during the winter. 20/ While poor lighting was apparently not

20/ Ronald Keffer admitted that November and December of 1962 brought freezing weather at Beckley, and I find from official records of the Weather Bureau of the U. S. Department of Commerce, of which I take official notice, that in October 1962, the Beckley area experienced 7 days of freezing temperature, in November it had 16 such days, and in December 29 such days with 3 days of zero weather, and 1 day with 14 below zero. I do not credit other testimony of witnesses of General Counsel conflicting with these facts.

quite as important a factor, because comparatively little work was done in the plant at night, lack of adequate heat was most serious because of the obvious danger of freezing and bursting of bottled products and of portions of the sanitary system in the warehouse. Hunnicutt emphasized this in his talks with the union agents on October 1 and 9, and his explanations for the shutdown to employees on the 10th; and Brown, one of the main union adherents, recognized the lighting problem on the 10th when he offered to help Respondent by installing the lights himself.

General Counsel tried to discount the main defense by arguing that there was no real economic justification for the shutdown, because Respondent's business at the new plant had been building up despite the strike. The record shows that Respondent's move to the new plant was a permanent one, as it let contracts and procured equipment designed to complete that building with proper heat, light and other facilities. In anticipation of its operation, Respondent had hired Smith and Blevins, both experienced men, as permanent staff for the new plant, and the employees hired during the strike were taken on a permanent basis (leaving aside the possible effects of the pending labor dispute). Though the business suffered some setbacks in sales and income at the outset of the strike, it had been making a slow but steady recovery since May, in part by Respondent's expanded use of vending machines and solicitation of new accounts; it also regained some large customers which improved earnings of one or more route-salesmen up to the shutdown. 22/ At the end of the year 1962, Respondent still had an operating loss about twice that experienced in 1961, but this was in part due to declining economic conditions in the Beckley area

22/ The sole compensation of route-salesmen comes from commissions on their sales.

and the fact that Respondent stopped bottling at Beckley when it moved into the new plant, and procured all its products from the Princeton plant. Further, deterioration of economic conditions was apparently not a large factor in the shutdown because it is not mentioned in the corporate action of September, nor did Hunnicutt mention it in any of his talks with supervisors or employees in September and October. Further, the declining economic conditions have not deterred Respondent from attempting to service the Beckley area as best it can from the Princeton plant since the shutdown. While these facts fall far short of supporting the "economic collapse" stated in Respondent's answer as justification for the shutdown, the failure of that defense does not detract from the salient circumstance that Respondent was forced into the October shutdown and transfer of operations to Princeton as a temporary economic expedient by activity of the Union which occurred before the employees joined it, and made the plant untenable for winter operation.

The Union in effect recognizes the effect of its prior activities as a factor in the shutdown, when it argues that, assuming one or more of the facilities lacking in the plant contributed to the decision to shut down, the shutdown was still unlawful because "the Union's advent was also a factor," and thus a partial motivation for it. It is well settled that where a plant shutdown resulting in termination of employees is partly due to the employees' union activities, the shutdown is an unfair labor practice. 23/ However, it is clear from the sequence of events that the "advent" of the Union which forced

23/ Darlington Manufacturing Company, 139 NLRB No. 23, and cases cited in footnote 17, at page 8.

the shutdown was the Union's prior activity, culminating in its refusal on October 1 to relax its economic pressure on Respondent enough to enable Respondent to make its plant usable during the winter. This is the only union activity which clearly motivated Hunnicutt and which he regretfully and perhaps angrily explained to the employees on the 10th as the reason for shutdown. This is far from saying, however, that Respondent shut the plant because of, or in retaliation for, his employees' affiliation with the Union. To the contrary, the fact that Respondent both before and after the layoff indicated to the employees that it hoped to recall them if the dispute with the Union was ever settled and the plant reopened, that Hunnicutt offered Brown, his best producer among the driver-salesmen, a job with the Princeton corporation notwithstanding his known affiliation with the Union, and retained his two supervisors and Meadows, the trailer driver, in his attempt at temporary operation out of Princeton, is substantial evidence (1) that Respondent was shutting down at Beckley against its will and not deliberately as a reprisal against its employees because of their union activity, and (2) that Respondent had bona fide desire to keep together a nucleus of its workforce, regardless of their union affiliation or lack of it, against the day when it might be able to resume operations at Beckley in an efficient manner. The economic dilemma into which Respondent had finally been forced by the Union also colors the cryptic remark of Hunnicutt on the 10th that "someone is going to pay" for the Union's activity, so as to make it equivocal. While he probably said this angrily in the same breath that he charged the Union with "ruining" him (which was not literally true), and in this respect it is inferrable that the "someone" who would pay for it

would be the employees then being terminated, it is also clear that Respondent was also being forced to "pay", because it was still operating at a loss at Beckley and was being forced into the more inconvenient (and undoubtedly more expensive) expedient of serving the Beckley area from the distant Princeton plant. 24/ This, of course, would hurt the employees who were laid off in the process; but the fact that in the same breath Respondent tried to alleviate the economic blow to at least two union adherents by promising one first consideration for a job if the plant reopened, and offering the other (Brown) a job at Princeton, militates against the inference that it was closing down deliberately to

24/ It should be noted here that Respondent was not going completely out of business at Beckley, and giving up its distribution franchise for that area, but only falling back on the facilities of the Princeton corporation, as it had done in the past when the old Beckley plant had been shut down for repairs and the like, and also for a few days at the very start of the strike in May. The Board apparently did not find from its investigation of that dispute, and General Counsel does not now contend, that temporary switching of operations to the Princeton plant in May during the strike was unlawful. Hence, the situation here is far different from that in the Darlington case, supra, on which General Counsel and the Union rely. Nor is there substantial proof here in that Respondent accelerated an otherwise legitimate plant shutdown after it learned its employees joined the Union, which distinguishes this case from others cited by the General Counsel.

hurt them because they joined the Union. 25/ As I see the whole situation, the best that can be said for the contentions of General Counsel and the Union is that Hunnicutt on the 10th clearly pointed out to two employees that the shutdown and their termination was forced on Respondent by past activity of the Union which they had since joined, and that one unfortunate result of the economic shutdown was their loss of employment. But since the Union, up to the night of October 5, was an outside labor organization with which Respondent was engaged in a labor dispute but which Respondent was not legally required to recognize or bargain with in any way, I am unable to conclude that Respondent's actions on the 10th, or before, with respect to the layoffs and shutdown were reasonably calculated to encourage or discourage union membership of its employees.

25/ Hunnicutt knew that Brown had been the active spokesman for the employees in discussing grievances and working conditions at the August 29 meeting, and I am satisfied that Respondent must have known from the outset on the 5th that Brown was openly instrumental in getting Harris to speak to the group of employees that evening just before they joined the Union.

Considering all of the circumstances surrounding the layoffs and shutdown, pro and con, I am of the opinion that Respondent has adduced evidence showing that the layoffs of October 4 and 5 and shutdown of October 10 were motivated by economic considerations caused by the Union's activities prior to October 4, which is adequate to rebut the prima facie case of discriminatory motivation adduced by General Counsel. While the entire case on this point is not wholly free from doubt, I am constrained to conclude that General Counsel has failed to sustain the burden of proving by the requisite preponderance of substantial evidence that the shutdown of October 10 was discriminatorily motivated, or that Respondent thereby terminated its employees in violation of the Act. I shall therefore recommend that paragraphs 6(a) and (b) and other portions of the complaint which charge that the shutdown and termination of employees on the 10th was a violation of the Act, be dismissed.

However, since the Union was the statutory bargaining representative of employees in the appropriate unit on and after the evening of October 5, 1962, I must also find that Respondent's unilateral act of shutting down the plant and terminating its employees was a refusal to bargain with the Union in violation of Section 8(a)(5) of the Act.

6. The termination of Kenneth Keffer

Kenneth Keffer was initially notified that he was laid off on October 4, but Smith did not actually terminate him that day, in hope of working out some

plan of retaining him at work in the warehouse. When that apparently failed, he was laid off on the 6th. Both times he was told that he was being terminated because of his accident. Respondent claims he was terminated because its insurance carrier had earlier insisted, as part of a safety campaign, that he could no longer drive a truck because he was under 21 and had had an accident in July 1962. General Counsel says this reason is a pretext and that he was unlawfully discharged because of his union affiliation. He was hired on May 15, 1962, as one of the replacements for striking employees. After acting as helper on a truck for a few days, he worked several months in the warehouse, and began to drive a truck on a regular route about August 1. While in the warehouse, he was involved on July 3, 1962, in a highway accident, which damaged a truck he was operating on an emergency run. After receiving his report of the accident, Smith merely cautioned Kenneth to be more careful, and thereafter assigned him to a regular route as driver-salesman which he handled until his layoff. At the time of the accident Hunnicutt felt that Kenneth was not at fault, but the West Virginia State Police later concluded otherwise. Sometime after the accident, Respondent's insurance carrier insisted that Respondent take measures to reduce the frequency of accidents involving its trucks and in September Respondent accordingly put into effect a safety program which involved the elimination of truck driving by employees under 21. As Kenneth Keffer was under 21, Hunnicutt told Smith that under this plan, he might have to let Kenneth go, but he wanted to work out some way of keeping him at work, as he still felt the accident was not his fault. As both

supervisors wanted to keep him on, Kenneth was retained as a driver, despite the safety program. However, when the insurance carrier later insisted upon elimination of under-age drivers, Hunnicutt told Smith about October 4 he could not save Kenneth and that he must be released. Smith finally released him "because of the accident" on the 6th. Respondent offered him no hope then or later that he might be recalled, although Hunnicutt on the 10th explained to his brother Ronald that he had been trying to "clear up" the problem with the insurance carrier arising from the accident. It should also be noted that, when Smith announced the economic layoff on the 4th, the employees at his request inferentially suggested Kenneth for layoff for his lack of seniority, 26/ notwithstanding which Smith kept him on another day in hopes of finding a way to retain him in some capacity. These facts afford cogent support for Respondent's defense.

General Counsel and the Union attack the defense mainly on the ground of the timing of the termination on the day after Kenneth and others had joined the Union, and that organization had requested Respondent to bargain about their future employment. But the timing loses significance in light of the facts that Respondent reluctantly and legally included him in the layoff because of prior pressure from the insurance company, despite which Smith tried to retain him, and Hunnicutt as late as October 10

26/ As a driver, Kenneth was junior in seniority to Brown and other drivers, and as a warehouseman was junior to his brother.

indicated regret at being unable to work out with the insurance carrier a method of retaining him. These facts strongly support the inference that Respondent would have retained him, notwithstanding his union affiliation (as it tried to do with Brown), if it could have overcome the insurance problem, and militate against any contrary inferences arising from mere timing and resentment of Respondent toward the Union arising from its past economic warfare with Respondent. The one circumstance which is suspicious in his case is that, although management repeatedly professed a desire to keep him in some capacity, and Smith wanted to use him in the warehouse, Respondent never offered him that job. Hunnicutt admits this, but says he could not on the 10th have offered him such a job because Respondent was closing the plant, which I have found was based on legitimate business reasons.

Considering all the circumstances pro and con, I conclude that General Counsel has failed to prove by the requisite preponderance of evidence in the record considered as a whole that Respondent terminated Kenneth Keffer because of his union affiliation or for the purpose of discouraging union affiliation, and I shall therefore recommend dismissal of those portions of the complaint which allege that his termination was discriminatory.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in section III above, occurring in connection with the operations of Respondent described in section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to constitute

unfair labor practices tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondent has engaged in unfair labor practices violative of Section (a)(1) and (5) of the Act, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has refused in good faith to bargain collectively with the Union as the representative of its employees in an appropriate unit, I will recommend that Respondent, upon request, bargain collectively with said labor organization as the exclusive representative of all employees in the unit herein found appropriate and, if an agreement is reached, embody such understanding in a signed agreement.

As Respondent has engaged in coercive threats and promises to employees in violation of the Act, which requires setting aside the election, and avoided its duty to bargain with the Union, I shall recommend issuance of a broad cease and desist order.

Upon the basis of the foregoing findings of fact and the entire record, I make the following:

Conclusions of law

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

2. All drivers and plant employees at Respondent's plant in Beckley, West Virginia, excluding office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9(b) of the Act.

3. Since October 5, 1962, the Union has been and now is the exclusive representative of all employees in said unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing since October 7, 1962, to meet with the Union for purposes of collective bargaining and by unilateral shutdown of its plant and termination of employees after that date, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By the above conduct, and by making coercive threats of reprisal and promises of benefits to its employees, as found above, Respondent has interfered with, restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

6. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

7. Except as otherwise found above, Respondent has not engaged in unfair labor practices as charged in the complaint.

On the basis of the above findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER

Pepsi-Cola Bottling Company of Beckley, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing by unilateral plant shutdowns and terminations of employees, or otherwise, to recognize or bargain collectively with the Union as the exclusive representative of its employees in the unit herein found appropriate.

(b) Threatening employees with reprisals such as a plant shutdown, loss of jobs, denial of new equipment, advertising aid or better working conditions, or a refusal to recognize or deal with the Union, if they vote for that organization in a Board-conducted election.

(c) Promising employees new equipment, advertising aids or other benefits if they vote against the Union in a Board-conducted election.

(d) In any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain with the above-named Union as the exclusive bargaining representative of all employees in the aforesaid appropriate

unit with respect to wages, rates of pay, hours of employment, or other conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant in Beckley, West Virginia, copies of the notice attached hereto and marked "Appendix." 27/ Copies of such notice to be furnished by the Regional Director for the Ninth Region shall, after being duly signed by Respondent's representative, be posted, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

27/ If these Recommendations are adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER," in the notice. If the Board's Order is enforced by a decree of the United States Court of Appeals the notice shall be further amended by substituting the words "A DECREE OF A UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

(c) Notify said Regional Director in writing within 20 days from the date of receipt of this Report, what steps Respondent has taken to comply herewith. 28/

It is further recommended that the complaint be dismissed insofar as it alleges that Respondent unlawfully secured written statements from employees showing their union affiliation, shut down its plant and locked out or terminated its employees on October 10, 1962, and discharged Kenneth Keffer on October 6, 1962.

It is further recommended that the Board set aside the election of August 31, 1962, and direct a new election at an appropriate time.

Dated at Washington, D. C.

s/Eugene F. Frey
Trial Examiner

28/ If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps Respondent has taken to comply herewith. "

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO THE

RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL, upon request, bargain collectively with CHAUFFEURS, TEAMSTERS & HELPERS LOCAL UNION 175, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, as the representative of all our employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such an understanding in a signed agreement. The bargaining unit is:

All drivers and plant employees at our Beckley, West Virginia, plant, excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to recognize or bargain with the above-named union as the exclusive representative of all employees in the bargaining unit described above, by unilateral shutdown of our plant and termination of our employees, or otherwise.

WE WILL NOT threaten our employees with reprisals such as a plant shutdown, loss of jobs, denial of new equipment, advertising aid or better

working conditions, or a refusal to recognize or deal with the above union, if they vote for that organization in a Board-conducted election.

WE WILL NOT promise our employees new equipment, advertising aid or other benefits if they vote against said union in a Board-conducted election.

WE WILL NOT in any other manner interfere with, restrain or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized by the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of said union or any other labor organization.

**PEPSI-COLA BOTTLING
COMPANY OF BECKLEY, INC.**
(Employer)

By _____
(Representative) (Title)

Dated _____

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Transit Building, Fourth and Vine Streets, Cincinnati 2, Ohio (Tel. No. Dunbar 1-1420), if they have any questions concerning this notice of compliance with its provisions.

145 NLRB No. 82

D-5810

Beckley, W. Va.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PEPSI-COLA BOTTLING COMPANY)
OF BECKLEY, INC.)

and)

CHAUFFEURS, TEAMSTERS AND) Case Nos.
HELPERS LOCAL UNION NO. 175,) 9-CA-2716
INTERNATIONAL BROTHERHOOD) 9-RC-4997
OF TEAMSTERS, CHAUFFEURS,)
WAREHOUSEMEN AND HELPERS)
OF AMERICA)

DECISION AND ORDER

On May 14, 1963, Trial Examiner Eugene F. Frey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. He also found that the Respondent had not engaged in other unfair labor practices within the meaning of Section 8(a)(1) and (3) and recommended dismissal of the complaint as to such allegations. Thereafter, the Union and the General Counsel filed exceptions to the Intermediate Report and briefs. The Respondent filed no exceptions or brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified herein.

No exceptions were filed to the Trial Examiner's findings that the Respondent violated Section 8(a)(1) and (5) of the Act, and interfered with the election held on August 31, 1962. Accordingly, we adopt these findings and shall order that the Respondent cease and desist from interfering with the statutory rights of its employees and that the election be set aside, as the Trial Examiner has recommended. 1/

To remedy the 8(a)(5) violations, the Trial Examiner recommended that the Respondent cease and desist from refusing to recognize or bargain collectively with the Union as the exclusive representative of its Beckley drivers and plant employees, and, affirmatively, that upon request the Respondent bargain with the Union as such representative.

The Charging Union and the General Counsel except to the Trial Examiner's failure to recommend, in addition, that the Respondent be ordered to reopen its Beckley plant and to reinstate with backpay the employees whom it terminated in October 1962.

1/ Like his colleagues, Member Leedom finds 8(a)(5) in the Respondent's refusal of the Union's request to bargain on behalf of the replacements. However, unlike them, he does not find 8(a)(5) in the unilateral closing of the plant on October 10 for economic reasons. In the latter connection, he would base the 8(a)(5) finding on the failure of the Respondent to bargain concerning the effects of the shutdown on the employees. See *Fibreboard Products*, 130 NLRB 1558; also Member Leedom's separate opinion in *Northwestern Publishing Company*, 144 NLRB No. 98.

They argue in substance that it is inconsistent to order the Respondent to bargain with the Union as aforesaid and yet at the same time fail to order restoration of the bargaining unit which at least temporarily was extinguished by the Respondent's action in closing its plant.

Although we might agree with these exceptions under other circumstances, we cannot do so in the particular circumstances present in the instant case. As appears from the Trial Examiner's findings, the Respondent arrived at a decision to shut down the Beckley plant before its obligation to bargain with the Union matured; indeed, the decision was made before the Union even began to organize the employees who subsequently selected it as their statutory representative. The Respondent's shutdown decision was motivated solely by lawful economic considerations—the existence of highly unsatisfactory operating conditions resulting from the absence of heating, lighting, and sanitary facilities at the plant. The Respondent's inability to correct such conditions was directly attributable to the Union's picketing activities and its refusal to accede to the Respondent's request to move the pickets for a period long enough to allow installation of these facilities.

In fashioning a remedy order we must bear in mind that the remedy should be adapted to the situation that calls for redress. From the findings made by the Trial Examiner, which we accept, it is quite clear that the Respondent's shutdown of the Beckley plant was neither motivated by unlawful discriminatory reasons nor was it otherwise in derogation of the Union's status as statutory bargaining agent. In these particular circumstances we do not think it appropriate, notwithstanding our

adoption of the Trial Examiner's finding of unlawful unilateral action, to require the Respondent to reopen its Beckley plant and to reinstate at this time the employees whom it terminated as a result of its decision to close that plant. We believe instead that the remedial policies of the Act will be sufficiently effectuated by an order which directs the Respondent, in the event that it resumes operations at its Beckley plant, (1) to offer employment to those employees who were terminated as a result of the October 1962 shutdown, to be selected as required from among their number on a non-discriminatory basis and before any other employees are hired, and (2) to bargain upon request with the Union as the exclusive representative of its employees in the appropriate unit. The Trial Examiner's recommended remedial order will be modified accordingly. 2/

Since the posting of a notice in a closed plant would be inadequate to inform the terminated employees of the Order here issued, we shall direct instead that a copy of the notice be mailed to each such employee.

In view of our adoption of the Trial Examiner's 8(a)(5) finding, it follows that no question concerning representation affecting commerce exists. Accordingly, we reject the Trial Examiner's recommendation that we direct an election at some later date to determine the statutory representative of the employees, and shall dismiss the petition filed herein.

2/ However, we expressly reserve the right to modify our remedial order as set out at length below if made necessary by a change of conditions or circumstances not now apparent.

Although Member Leedom does not find 8(a)(5) in the unilateral closing of the plant, he joins in the remedial order herein. He deems such relief necessary in order to remedy the violations as he has found them.

ORDER

Upon the entire record in this case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pepsi-Cola Bottling Company of Beckley, Inc., Beckley, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Chauffeurs, Teamsters and Helpers Local Union No. 175, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all the employees in the unit herein found appropriate, with respect to rates of pay, wages, hours, and other terms and conditions of employment, in the event that it resumes operations at its Beckley, West Virginia, plant.

(b) Threatening its employees with economic reprisals, or promising them economic benefits, to influence their choice of a collective-bargaining representative.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist the said Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected

by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) In the event that the Respondent resumes operations at its Beckley, West Virginia, plant, promptly notify the said Union of such fact, and, upon request, bargain collectively with the said Union as the exclusive representative of the employees in the appropriate unit and embody in a signed agreement any understanding reached.

(b) In the event that the Respondent resumes operations at its Beckley, West Virginia, plant, offer to the terminated employees, in the manner provided for above, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, as set forth herein.

(c) Mail a copy of the notice attached hereto marked "Appendix" 3/ to each of the employees referred to above.

(d) Notify the Regional Director for the Ninth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

3/ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

IT IS HEREBY FURTHER ORDERED that the election conducted herein on August 31, 1962, be, and it hereby is, set aside; and the petition filed herein be, and it hereby is, dismissed.

Dated, Washington, D. C.

Boyd Leedom, Member

John H. Fanning, Member

Gerald A. Brown Member

(SEAL)

NATIONAL LABOR RELATIONS
BOARD

D-5810

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Act, as amended, we hereby notify you that:

WE WILL NOT refuse to bargain collectively with **CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL NO. 175 (IBT)**, as the exclusive representative of our employees at our Beckley, West Virginia, plant, with respect to rates of pay, wages, hours, and other conditions of employment, in the event that we resume operations at the Beckley plant.

WE WILL NOT threaten our employees with economic reprisals or promise them economic benefits, to influence their choice of a collective-bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist the said Union or any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor

organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

WE WILL, in the event that we resume operations at the Beckley, West Virginia, plant, promptly notify CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION NO. 175 (IBT) of such fact, and, upon request, bargain collectively with that Union as the exclusive representative of our employees and embody in a signed agreement any understanding reached.

WE WILL, in the event that we resume operations at the Beckley plant, offer to the employees who were terminated as a result of the October 1962 shutdown of our Beckley plant, to the extent and in the manner provided for in the Board's Order, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, as provided in the Board's Decision and Order.

PEPSI-COLA BOTTLING COMPANY
OF BECKLEY, INC.
(Employer)

Dated _____

By _____
(Representative) (Title)

Employees may communicate directly with the Board's Regional Office, Transit Building, Fourth and Vine Streets, Cincinnati, Ohio (Tel. No. 381-1420), if they have any question concerning this notice or compliance with its provisions.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PEPSI-COLA BOTTLING
COMPANY OF BECKLEY, INC.

and

Case Nos. 9-CA-2716
9-RC-4997

CHAUFFEURS, TEAMSTERS &
HELPERS LOCAL UNION #175,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

ORDER DENYING REQUEST

On January 3, 1964, the Board issued a Decision and Order 1/ in the above-entitled proceeding in which, inter alia, it adopted the findings, conclusions and recommendations, with certain modifications, of the Trial Examiner as contained in his Intermediate Report dated May 14, 1963, and ordered the Respondent, in the event it resumes its operations at the Beckley, West Virginia, plant, to bargain with the Charging Union and offer reinstatement to the employees whom it terminated in October 1962, but reserved the right to modify its remedial order if made necessary by a change of conditions or circumstances. It rejected the Charging Union's and the General Counsel's exceptions to the Trial Examiner's failure to recommend, in addition, that the Respondent be ordered to reopen its Beckley plant and to reinstate with backpay the employees whom it terminated.

1/ 145 NLRB No. 82

Thereafter, on January 20, 1964, the Charging Union filed a request for reconsideration of the Decision and Order, alleging "that the remedy prescribed is in conflict with Board law and, further, that present conditions and circumstances warrant a modification of the Order." The Union requests that the Board order the Respondent to reopen the Beckley plant and offer reinstatement, with backpay, to the terminated employees, or alternatively, offer reinstatement, with backpay, to the terminated employees at its Princeton, West Virginia, plant.

The Board having duly considered this matter,

IT IS HEREBY ORDERED that the Charging Union's request for reconsideration be, and it hereby is, denied as it contains nothing not previously considered by the Board.

Dated, Washington, D. C., February 11, 1964

By direction of the Board:

George A. Leet

Associate Executive Secretary

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHAUFFEURS, TEAMSTERS AND)		
HELPERS LOCAL UNION No. 175,)		
AFFILIATED WITH THE INTER-)		
NATIONAL BROTHERHOOD OF)		No. 18447
TEAMSTERS, CHAUFFEURS,)		
WAREHOUSEMEN AND HELPERS)		
OF AMERICA,)		
)	
Petitioner,)		
)	
v.)		Case Nos.
)	9-CA-2716
NATIONAL LABOR RELATIONS)		9-RC-4997
BOARD,)		
)	
Respondent.)		

PETITION TO REVIEW AND
SET ASIDE AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable Judges of the United States Court
of Appeals for the District of Columbia Circuit:

This is a Petition to Review and Set Aside an Order of the National Labor Relations Board, hereinafter referred to as the Board. On January 3, 1964, the Board entered a final Order by which Petitioner is aggrieved and its interests adversely affected in a proceeding appearing and designated on the records of the Board as Pepsi-Cola Bottling Company

of Beckley, Inc. and Chauffeurs, Teamsters and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Case Nos. 9-CA-2716 and 9-RC-4997. A copy of the Board's Decision and Order in such matter is attached and made a part hereof as Exhibit "A".

In support of this Petition your Petitioner respectfully shows to this Court:

1. Petitioner, Teamsters Local 175, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization which is a voluntary, unincorporated association, chartered to organize and represent employees in collective bargaining.

2. In the final Decision and Order, hereinabove referred to, the Board concluded that Pepsi-Cola Bottling Company of Beckley, Inc., Respondent below and hereinafter referred to as "Pepsi-Cola", had committed certain unfair labor practices in violations of Sections 8(a)(1) and (5) of the Labor-Management Relations Act, as amended, and had not committed certain other unfair labor practices in violation of Sections 8(a)(1) and (3) of the Labor-Management Relations Act, as amended. The Board ordered that the Complaint, which had been issued by the General Counsel of the National Labor Relations Board on December 14, 1962, against Pepsi-Cola be dismissed in part.

3. This Court, in the foregoing circumstances, has jurisdiction of this action and the parties hereto under the provisions of Section 10(f) of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U.S.C., Sec. 151, et seq., hereinafter called "the Act."

NATURE OF THE PROCEEDINGS AS TO
WHICH REVIEW IS SOUGHT

4. The nature of the proceedings as to which review is sought is as follows:

Upon an original charge filed on October 15, 1962, and upon amended charges filed on November 27, 1962, by Petitioner against Pepsi-Cola, the General Counsel of the Board issued a Complaint alleging that Pepsi-Cola had engaged in certain unfair labor practices in violation of Sections 8(a)(1), (3) and (5) of the Act.

The Complaint alleged, in substance, that Pepsi-Cola had (1) threatened and polled its employees and unlawfully promised benefits to them in violation of Section 8(a)(1) of the Act; (2) closed down its plant in violation of Section 8(a)(3) of the Act; and (3) refused to bargain with the Petitioner in violation of Section 8(a)(5) of the Act.

Pursuant to notice a hearing was held before the Honorable Eugene F. Frey, Trial Examiner, at Beckley, West Virginia, on February 12, 13, 14, 15, and 26, 1963. On May 14, 1963, Trial Examiner Frey issued his Intermediate Report finding that Pepsi-Cola had engaged in certain unfair labor practices but had not engaged in certain other unfair labor practices

Thereafter, the General Counsel and Petitioner filed Exceptions to the Intermediate Report and Briefs in Support of their Exceptions.

On January 3, 1964, the Board issued its Decision and Order, finding that Pepsi-Cola had engaged in conduct violative of the Act but ordering

that the Complaint be dismissed with respect to certain other practices in the Complaint.

GROUND'S UPON WHICH RELIEF IS SOUGHT

The Petitioner respectfully submits and contends that the Board erred to the extent that it found that Pepsi-Cola did not engage in conduct in violation of Sections 8(a)(1) and (3) of the Act and that the Decision and Order of the Board is, to that extent, unsupported by substantial evidence on the record considered as a whole and is contrary to law. The Board further erred in failing to order relief which is in accordance with principles of law and equity.

THE RELIEF PRAYED

In view of the foregoing, the Petitioner prays:

(1) that a certified copy hereof be forthwith served according to law upon the Respondent Board and that the Respondent Board be required in conformity with the law to certify to the Court a transcript of the record of proceedings wherein said Order was entered, including the pleadings, record, and the Decision and Order of the Board.

(2) That said proceedings, findings, conclusions and Decision and Order be set aside, vacated and annulled to the extent that the Board found Pepsi-Cola not guilty of violations of the Act which had been alleged in the Complaint and that this case be remanded to the Board for the issuance of a Decision and Order in accordance with the decision of this Court.

(3) That this Court exercise its jurisdiction and grant Petitioner such other and further relief in the premises as the rights and equities of the cause may require and to the Court may seem just and proper.

Respectfully submitted,

Hugh J. Beins
100 Indiana Avenue, N. W.
Washington 1, D. C.

James R. Zazzali
100 Indiana Avenue, N. W.
Washington 1, D. C.

Counsel for Petitioner

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Petition to Review and Set Aside an Order of the National Labor Relations Board in the above matter was this 14th day of February, 1964, served by certified mail upon the following:

Ogden W. Fields, Executive Secretary
National Labor Relations Board
Washington, D. C. 20570

Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board
Washington, D. C. 20570

John C. Getreu, Director
Region 9, National Labor Relations Board
4th and Vine Streets
Cincinnati 2, Ohio

Frank L. Taylor, Jr., Esq.
Charleston National Bank Building
Charleston, West Virginia

Pepsi-Cola Bottling Company
Princeton, West Virginia

James R. Zazzali
100 Indiana Avenue, N. W.
Washington 1, D. C.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHAUFFEURS, TEAMSTERS AND)		
HELPERS LOCAL UNION NO. 175.)		
INTERNATIONAL BROTHERHOOD)		
OF TEAMSTERS, CHAUFFEURS,)		
WAREHOUSEMEN AND HELPERS)		
OF AMERICA,)		
Petitioner,)		
		No. 18,447
v.)		
NATIONAL LABOR RELATIONS)		
BOARD,)		
Respondent.)		

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the Court's approval, hereby stipulate and agree as follows:

I

ISSUES

1. Whether substantial evidence on the record considered as a whole supports the Board's conclusion that the Company's shutdown was motivated solely by lawful economic considerations.

2. Whether the Board erred in finding that the Company's polling of its employees did not constitute unlawful interrogation, in violation of Section

8(a)(1) of the Act.

3. Whether the Board's remedy effectuates the policies of the Act.

II

THE BRIEFS AND JOINT APPENDIX

1. The Union will serve by June 3, 1964, its designation of the portions of the record to be printed in a joint appendix, which designation shall include the Decision and Order of the Board, the Intermediate Report of the Trial Examiner, this stipulation, and the Court's order thereon. The Board will serve by June 9, 1964, its designation of additional parts to be printed.

2. The Union shall supervise the printing of the joint appendix and each party will bear the cost of printing the material designated by it. The joint appendix shall be filed on or before the date on which the Board's brief is due.

3. The Union shall file its brief, in typewritten form, on or before June 8, 1964, the date set by the Court; its brief in final form will be filed within ten (10) days after the Joint Appendix is printed.

4. The Board shall file its brief on or before July 3, 1964, the date set by the Court.

5. The reply brief, if any, shall be filed on or before July 17, 1964.

6. It is further agreed that any party and the Court, at or following the hearing in the case, may

refer to any portion of the original transcript of record on exhibits herein which has not been printed, or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix if the Court so decrees.

11

Dated at Washington, D. C. ,
this 12th day of May, 1964

James R. Zazzali
Counsel for Petitioner

Dated at Washington, D. C. ,
this 12th day of May, 1964

Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR
RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 18,447

September Term 1963

Chauffeurs, Teamsters and Helpers Local Union
No. 175, Affiliated with the International
Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America v. National
Labor Relations Board

Before: Burger, Circuit Judge
in Chambers.

PREHEARING ORDER

Counsel for the parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is hereby approved, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

Dated: May 15, 1964

Brief for Petitioner

United States Court of Appeals

FILED SEP 9 1964

IN THE

UNITED STATES COURT OF APPEALS

Nathan J. Paulson

For The District of Columbia Circuit

No. 18447

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL
UNION NO. 175, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition to Review and Set Aside An Order
of the National Labor Relations Board

HUGH J. BEINS,
JAMES R. ZAZZALI, ✓
100 Indiana Avenue, N.W.
Washington, D.C.

Attorneys for Petitioner.

QUESTIONS PRESENTED

I. Whether substantial evidence on the record considered as a whole supports the Board's conclusion that the Company's shutdown was motivated solely by lawful economic considerations.

II. Whether the Board erred in finding that the Company's polling of employees did not constitute unlawful interrogation, in violation of Section 8(a)(1) of the Act.

III. Whether the Board's remedy effectuates the policies of the Act.

IN THE
UNITED STATES COURT OF APPEALS

For The District of Columbia Circuit

No. 18447

**CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL
UNION NO. 175, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,**

Petitioner,

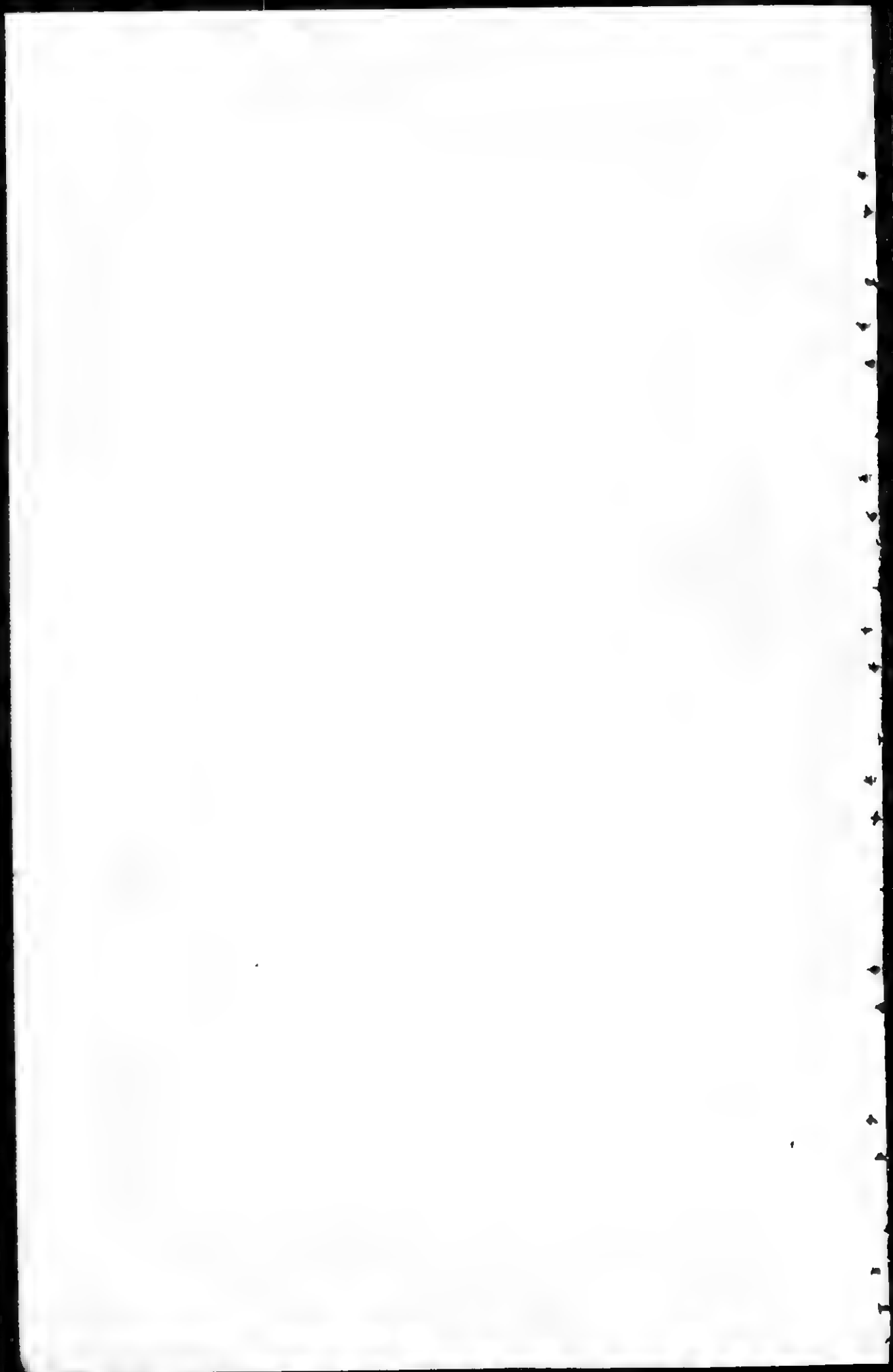
v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

**On Petition to Review and Set Aside An Order
of the National Labor Relations Board**

Brief for Petitioner



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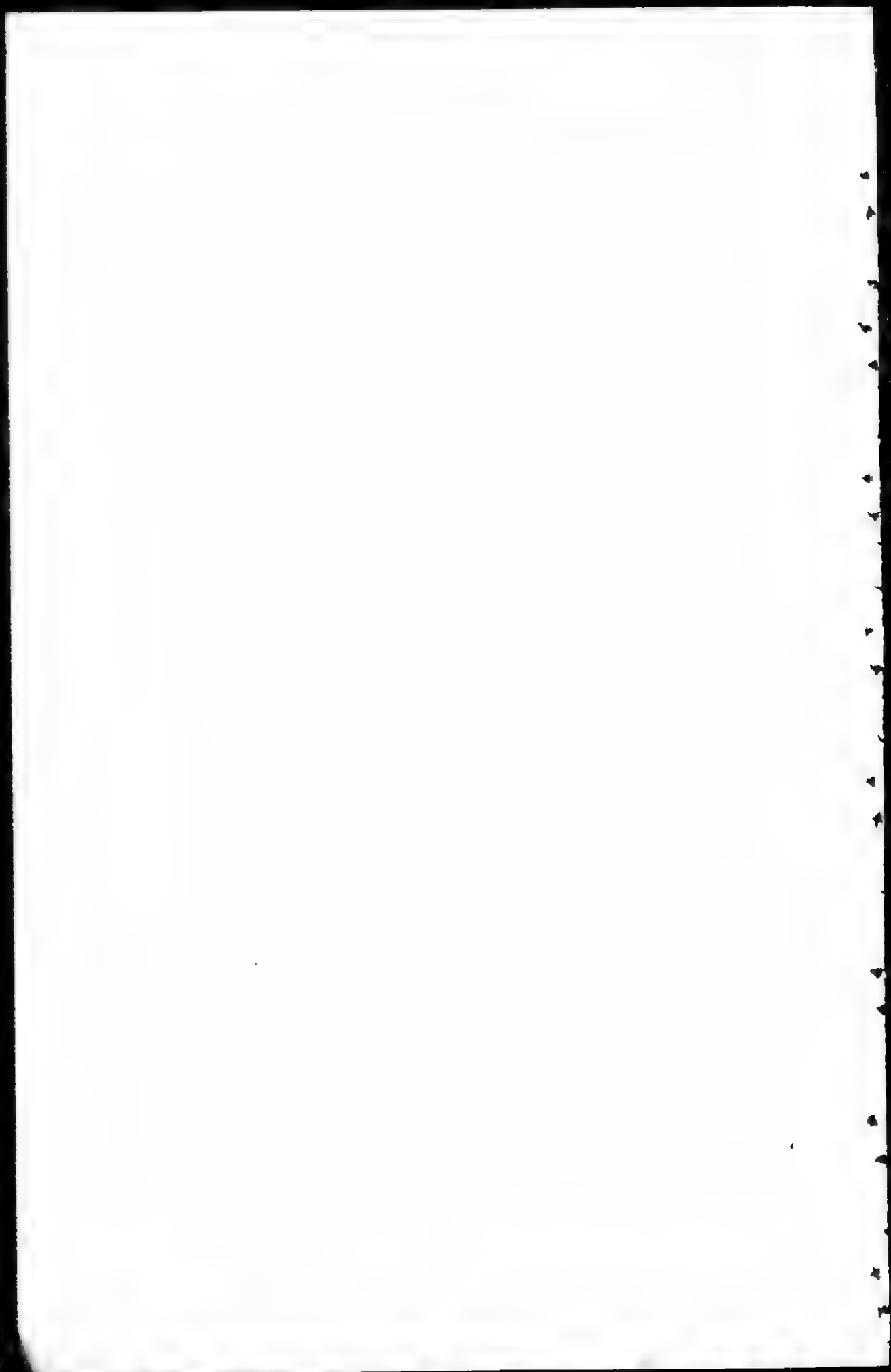
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JURISDICTIONAL STATEMENT

This case is before the Court on a petition to review and set aside a final order of the National Labor Relations Board, hereafter referred to as the Board. The Court has jurisdiction under Section 10(f) of the Labor Management Relations Act, 1947, as amended, hereafter referred to as the Act, 61 Stat. 136, 29 U.S.C. Sec. 151, et seq.

The Board's Decision and Order are reported at 145 NLRB No. 82 (J.A. 459). 1/

PRELIMINARY STATEMENT

In its Decision and Order, the Board adopted the Trial Examiner's findings that the Pepsi-Cola Bottling Company of Beckley, Inc., hereafter referred to as the Company, violated Section 8(a)(1) of the Act by making coercive threats of reprisal and promises of benefits to its employees and further violated Section 8(a)(5) of the Act by its unilateral shutdown of the plant and by failing to meet with the Union for purposes of collective bargaining (J.A. 460). The Company filed no exceptions to the Trial Examiner's findings on these issues and the Board adopted his conclusions, *pro forma*.

The Board ordered that the election, won by the Company, be set aside (J.A. 460). The Board

1/ "J. A." refers to those portions of the record printed in the Joint Appendix. Whenever a semi-colon appears in a series of references, those preceding the semi-colon are to the findings of the Board or Trial Examiner, those succeeding, to the supporting evidence. In two instances, where matters were inadvertently omitted from the Joint Appendix by the printer, the reference to the transcript is noted by "TR" and the page number.

also adopted the Trial Examiner's conclusions, over the Exceptions of the General Counsel and the Union, that the Company's polling of its employees as to their union membership was not unlawful interrogation in violation of Section 8(a)(1) of the Act. Finally, the Board accepted the Trial Examiner's conclusion, over the Exceptions of the General Counsel and the Union, that the unilateral shutdown of the plant was not a violation of Section 8(a)(3) of the Act (J. A. 460, 461, 462). However, whereas the Trial Examiner's conclusion was premised on the finding that the shutdown "was mainly caused by the Union's continued picketing which prevented Respondent from 'winterizing' the plant . . .", the Board's finding was predicated on the finding that the Company's "shutdown was motivated solely by lawful economic considerations--the existence of highly unsatisfactory operating conditions resulting from the absence of heating, lighting and sanitary facilities at the plant." (J. A. 461)

The Union filed a Motion for Reconsideration on January 29, 1964. The Board issued its Order Denying Request on February 11, 1964 (J. A. 468).

The facts upon which the Trial Examiner and Board based their findings, together with the other record evidence, is summarized below. The Union asks the indulgence of the Court for the lengthy, but necessary, exposition of the facts.

STATEMENT OF THE CASE

A. Background—The opening of the new plant and the strike of May, 1962

The Company, a West Virginia Corporation, was engaged in the bottling and distribution of carbonated beverages at a plant in Beckley, West Virginia (J. A. 417). The Company employed primarily driver-salesmen who worked the routes and one or two plant employees (J. A. 52).

During the events described herein, H. P. Hunnicutt was the executive vice president, a director and majority stockholder of the Company. Kyle C. "Pete" Smith and Russell Blevins were the sales manager and route supervisor respectively, at the Beckley plant. Each is a supervisor within the meaning of the Act. Hunnicutt is also a vice president, director and stockholder in each of three other Pepsi-Cola bottling companies located at Princeton, Alderson and Parkersburg, West Virginia (J. A. 417; 96, 97, 133, 101, 106, 107, 111, 133, 184, 185, 236).

The Company was originally located in a plant on Railroad Street in Beckley where operations had been conducted for eight or ten years (J. A. 104). Due to overcrowded conditions a new plant-warehouse was constructed in 1961 and 1962 into which the Company moved in April of 1962. Upon occupation of the new building the Company immediately started operations (J. A. 104, 105, 106, 113, 114).

Shortly thereafter, on May 15, 1962, the Company's employees, who were not members of any labor organization, presented their grievances to H. P. Hunnicutt. When Hunnicutt did not give

them satisfaction on their complaints, the employees walked out (J. A. 348-350) 2/

On the day of the walk-out the employees sought out Reed Davis, a representative of District 50 of the United Mine Workers Union, for assistance and indicated to him their desire to join District 50. Davis called Hunnicutt and asked him if he would "go along" with them if Davis signed up the employees. Hunnicutt replied, "Mr. Davis, if they want the union it's all right with me." (J. A. 350, 351). After Davis told the employees to forget the matter and go back to work (J. A. 327), the employees decided to ask Kermit Harris, Business Representative of the Union, that is, Teamsters Local Union No. 175, to represent them. The employees signed Teamster authorization cards on May 16, 1962 (J. A. 27, 32, 33, 78). Harris called Hunnicutt on May 17, to inform him that the Teamsters Union represented a majority of the Company's employees. Harris expressed a desire to get the problem settled and offered to come to see Hunnicutt in Princeton in order to get the trucks operating so that the beverages could be sold. Hunnicutt refused to grant recognition, told Harris he had nothing to discuss with him, stated that he had no employees in Beckley and told Harris to "go straight to Hell" (J. A. 34, 84, 85). The same day, May 17, the Union established a

2/ It was the Union's position that the employees were discharged and, in any event, they requested reinstatement before replacements were hired. Six affidavits were submitted to that effect. The NLRB, without a hearing, accepted Hunnicutt's statement that they walked out and did not request reinstatements until after replacements were hired (9-CA-2631). Accordingly, the Union herein assumes that the employees struck and were not fired.

picket line in front of the Beckley plant (J. A. 35).

Hunnicutt continued to operate the plant for two or three days, "long enough for things to cool down" (J. A. 351). However, he did not stop servicing the Beckley area but hired replacements who delivered to that locale from the Pepsi-Cola plant in Princeton for the next two weeks (J. A. 37, 38, 77, 78, 99, 100, 352). The Company resumed operations in Beckley on or about May 26, after assurances from Union Business Agent Harris to Plant Manager Smith that there would not be any trouble. (J. A. 352)

B. August 1962—The Company's Threats and Promises before the Election; the Union loses the Election and files Objections

The Union subsequently filed a representation petition. Prior to the election, Hunnicutt told Plant Manager Smith to lock the doors and come to Princeton if the Union won the election (J. A. 189). The attorney for the Company, at an unidentified time, told the employees that the Teamsters were not fit to "work under" (J. A. 325, 326).

On August 29th, two days before the election, all of the new Beckley employees, that is, the replacements for the striking employees, attended a meeting held in Hunnicutt's office at the Princeton Pepsi-Cola plant. Hunnicutt told the em-

employees present that if they did not vote the Teamsters out he would lock the doors and close down the plant (J. A. 422, 423; 168, 188, 243, 282, 290, 301, 305, 306, 320, 252). Illustratively, some of the statements made by Hunnicutt include the following: He would "close down the plant before he would operate under the Teamsters" (J. A. 168); if the employees didn't "vote those damn thugs out he would lock the doors" (J. A. 252); "if we did not vote out the Union, the Teamsters, that we would no longer have a job" (J. A. 149); "if the Teamsters were not voted out he would lock the doors, that he would not operate a plant under Teamsters' rule or control" (J. A. 150); "he did not mind if we signed a contract with Mr. Reed Davis (District 50 representative)... but he would not operate a plant under them damn Teamsters" (J. A. 306); "...if you vote those Teamsters out, we can all make more money" (J. A. 305, 306); if the men wanted another union Hunnicutt would consider it but he wouldn't work under the Teamsters (J. A. 168); after indicating that money was appropriated for advertising to help the employees' sales, Hunnicutt announced that he would "not spend a damn penny as long as they had those Teamsters in there" (J. A. 319).

Hunnicutt also made the following pledges to the assembled employees but conditioned each promise on the employees voting against the Teamsters (J. A. 421, 284, 285). For example, they would all be assured of their jobs (J. A. 149); he would help them with advertising which was needed to boost sales since some of the salesmen were on commission (J. A. 149, 252, 283, 290, 292); he

would assist them in rebuilding the Beckley territory (J. A. 149); he would procure new equipment, that is, buggies or handtrucks, new chains to hold the drinks in, and any other equipment the men needed (J. A. 149, 252, 283, 290, 292, 296, 306); he would come over and increase the sales (J. A. 252); and he would get new uniforms for them (J. A. 171, 237, 252, 283, 285, 286, 301, 318, 319).

Two days later, on August 31, 1962, the Teamsters lost the election, eight to four. On September 7, 1962, the Union filed Objections to the Election, a copy of which was served on the Company (J. A. 14, 15).

**C. Jackson's activities and September 24, 1963—
The Company decides to close down because
of Teamster Union activity and the picketing
at the plant**

Besides Harris, Robert Jackson, another business representative of the Union, was in direct contact with the Beckley plant while the picket line was up. On several occasions he visited the plant and spoke with the working replacements (J. A. 72, 73, 88, 89). According to one of the Company's witnesses, "it was general knowledge all over this part of the country" that the Union was trying to get in at Beckley (J. A. 345).

Twenty-four days after the election, while the Objections were still pending, a meeting of the Company's stockholders was held on September 24, 1962. Present were the Company's four stockholders, H. P. Hunnicutt, Anne S. Hunni-

cutt, Geraldine C. Taylor and John S. Taylor (J. A. 361, 362). According to the minutes of that meeting it was decided that the plant would be closed as of October 1, 1962, after Anne S. Hunnicutt, President of the Company

"advised concerning Teamster Union activity at the plant, and not being able to install heat and proper lighting in the plant due to picket line of the Teamsters Union, it is impossible to operate from this plant." (J. A. 414)

D. The September 30, 1962 meeting at which two Company stockholders reaffirmed their unwillingness to "go union"; the October 1 conversation between Hunnicutt and Rebhan

On September 30, 1962, the Sunday after the stockholders convened on September 24, a meeting was held in Hunnicutt's office in Princeton. ^{3/} Present were Supervisor Blevins, Plant Manager Pete Smith, Mr. Hunnicutt and Mr. and Mrs. Taylor. At this meeting Hunnicutt asked Smith and Blevins what could be done to increase the business in Raleigh County, where the Beckley plant is located (J. A. 111, 112). Smith and Blevins replied that the only way "we could increase the business right then was to sign up with the Union." (J. A. 241, 242). Hunnicutt did not

^{3/} The only evidence on the date of the meeting was given by Route Supervisor Russell Blevins who established the date of this second meeting as a Sunday, "sometime between September 24 and September 30, 1962." The only Sunday in that period is Sunday, September 30. In view of Blevins' uncontradicted testimony, upon which the Trial Examiner made no finding, it is reasonable to establish the meeting as occurring on the 30th (J. A. 241-244).

respond. Mrs. Taylor, Secretary, Treasurer and stockholder of the Company, said the Company couldn't go union in Raleigh County because "they wouldn't let us haul non-union drinks from Princeton to Beckley." Hunnicutt then stated that he "couldn't go union now" (The Princeton Corporation is non-union) (J. A. 101, 242, 333). The subject of Kenneth Keffer, a company employee who had been in an accident, was also discussed. Hunnicutt felt he could not keep him on because of trouble from the insurance company but that he would try to do something for Keffer. There was no reference by anyone to the closing of the plant at this meeting (J. A. 240-244).

The next day, October 1, Hunnicutt called Frank Rebhan, another agent of the Union, to discuss the Parkersburg Pepsi-Cola plant, which was under contract with the Union, and where Hunnicutt was also having problems. During the conversation Hunnicutt referred to the Beckley plant and asked Rebhan to pull off the pickets, whereupon Rebhan refused and told Hunnicutt the pickets would be there for the winter. Hunnicutt never called Rebhan again (J. A. 94, 118-120).

E. The October Events

Tuesday, October 2

After checking the inventory at Beckley the night before, as they normally did every 30 days, Mr. and Mrs. Taylor informed Hunnicutt, on Tuesday morning, that the Beckley employees were complaining because of the lack of heat,

Harris if he would represent Brown and the other Beckley employees. At about 6:30 p. m. , Brown, Lukach, Ronald Keffer, Kenneth Keffer, and John Davis, after asking Harris to represent them, signed Union authorization cards (J. A. 427; 43, 44, 48-52, 82, 144, 250, 407-412). The six employees constituted a clear majority of the Company's employees and the Trial Examiner so found (J. A. 438; 128-132).

Harris immediately notified Smith that the Union represented a majority of the employees, that Harris wished to negotiate an agreement, and that the men were not refusing to work (J. A. 427; 54). Smith stated that he would "have to call the boss." (J. A. 54).

Smith then informed Hunnicutt that a majority of the employees had joined the Union (J. A. 121, 122, 193, 194). Upon hearing of this development Hunnicutt ordered Smith to send back to Princeton a full trailer-load of drinks which had just arrived and instructed Smith to have the men punch out. (J. A. 52, 195, 196, 395, 396). Hunnicutt ordered the return of the trailer because he had "his belly full of it" (J. A. 395). After this day no more drinks were sent to the Beckley plant (J. A. 238) 4/

4/ Hunnicutt referred to the trailer-loads of drinks sent to Beckley October 2, at the hearing, as stop-gap merchandise. (TR 846).

According to testimony presented by the General Counsel the Friday trailer also contained a new line, throw-away bottles, a product which had never before been sent to Beckley (J. A. 145-147, 179, 180), but this was denied by Hunnicutt (J. A. 367, 368). The driver of the October 5 trailer, Meadows, who did not join the Union and who was retained by Hunnicutt, was not presented by the Company as a witness. The Trial Examiner did not resolve the conflict in testimony.

Smith returned from the office and told the employees that Hunnicutt had directed him to "send you boys home and for me to unload the trailer." (J. A. 54). Harris asked Smith if Smith wanted the boys to work the next day as usual. Smith replied, "Yes, the ones that are scheduled to come out tomorrow can come out". The men then left the plant but Harris remained and asked Smith if he wanted to take the cards to a clergyman or other responsible citizen for verification. Smith answered, "If you tell me you got them, that is good enough for me." Smith then passed the suggestion on to Hunnicutt who consented to the verification (J. A. 54-58, 191).

However, at an unidentified time, Hunnicutt also ordered Smith to get statements from the employees indicating whether or not they had joined the Union. Specifically, Hunnicutt asked Smith to "find out if those four men were in it that we had laid off on Thursday morning" (J. A. 190, 191, 379, 380).

Saturday, October 6

Jackson Brown and Ronald Keffer both worked this day after Smith called Hunnicutt for approval (J. A. 155, 156, 253, 254).

The other employees were also present and Smith announced that Hunnicutt wanted the application verified by a Justice of the Peace. Smith then explained that Hunnicutt wanted a separate statement from each employee indicating whether or not he had joined the Union. Each gave a statement on the back of sales slips. The precise

language is not known but the tenor of the statement was:

I, _____, did, on October 5, 1962, at 6:30 p.m., sign or fill out an application for membership in Teamsters Local Union 175, and do hereby make this statement to verify such (J. A. 153-156).

The statements were handed over to Smith who could not recall what he did with them (J. A. 155, 192).

Harris then arrived at the plant and he and Smith went to a Justice of the Peace who verified the signatures on the cards and gave a statement to that effect in writing (J. A. 58-62, 65, 413). Smith and Harris returned to the plant whereupon Harris departed but first told Smith that he would make himself available to Hunnicutt for the entire weekend. Harris told Smith that he had called Hunnicutt the last time and that now it was "his place to make some indication of what he wants to do with this; that the employees are pretty impatient, that they would like to get something settled" (J. A. 67).

Dallas received his check from Smith this day and Smith also informed Milam that he was "not quite sure yet what will happen. The rest of the men have all joined the Union now, and they might get something worked out, I don't know... you just check back with me and maybe we can get you back to work... we hope we can get it straightened out..." (J. A. 313, 314).

Smith notified Hunnicutt of the validation of the authorization cards (J. A. 125).

Sunday, October 7

Smith called Harris to inform him that Hunnicutt did not want to discuss the matter with Harris, that Hunnicutt had nothing to discuss with Harris, and that Harris could start anything he wanted to start (J. A. 69, 70).

Monday, October 8

Milam reported to the Beckley plant while Smith was speaking to Hunnicutt by telephone. Smith asked Hunnicutt if Milam should be sent out on a route to which Hunnicutt replied, "Hell, no. Lay him off." Milam did not work on Monday or thereafter (J. A. 316).

Tuesday, October 9

Harris and Robert Jackson, the other Union representative, drove over to see Hunnicutt at Princeton but were unable to locate him. Between 5:45 and 6:00 p.m., Jackson called Hunnicutt, by telephone, and requested a stipulation whereby the Union would be recognized as the collective bargaining representative for the Beckley employees. Hunnicutt, with profanity, stated that he would not deal with any Union and especially not the Teamsters. Under "absolutely no conditions" would he recognize the Union (J. A. 89, 91-93). Hunnicutt told Jackson that

"the Teamsters were to blame" for the plant closing and that there was no heat or lights in the plant (J. A. 133, 134, 135). Hunnicutt told Jackson that the Teamsters ruined him but he acknowledged that this was the first time he had ever made this claim (J. A. 141, TR 264). Drinks were also delivered this day out of Beckley (J. A. 248, 249). Ronald Keffer, Brown, Smith and Blevins worked on the 9th (J. A. 158).

Wednesday, October 10

After having worked with Blevins and Smith in Beckley on Tuesday, Jackson Brown and Ronald Keffer were called over to the Princeton plant by Hunnicutt on Wednesday. Brown and Keffer also desired to speak with Hunnicutt since they were not able to service the area with only four drivers where formerly there were eight. Hence, they went to see if they could get some assistance from Hunnicutt.

However, in his office Hunnicutt told them he was closing Beckley due to lack of heat and lights. He then stated that the Teamsters had put him out of business and someone was going to have to pay for it (J. A. 159-161, 172). Hunnicutt then took Brown alone, an hour later, and told Brown that he was closing down the plant because of the Teamsters. Brown asked Hunnicutt if he was going to run the Beckley area out of the Princeton plant, "and he told me it was none of my damn business, that as far as I, or any other employee of Beckley was concerned, that the Beckley Corporation had been dissolved." Finally, Hunnicutt told Brown that if he wanted to make application

for a job in Princeton he could do so. Later, when Brown did attempt to make application he was unable to contact Hunnicutt (J. A. 160-162). This was the first time Brown heard of the plant closing (J. A. 172, 173).

Hunnicutt also spoke with Ronald Keffer alone at which time Hunnicutt discussed the heat and lights as well as the truck accident of Kenneth Keffer, Ronald's brother. Hunnicutt stated that the plant was closed and asked Keffer if he would work for the Company in the event they ever decided to reopen Beckley, to which Keffer replied that he would (J. A. 257-260). This was the first information Keffer had that he was being laid off or that the plant was to be closed (J. A. 278).

The plant closed this day, although there were still drinks in the warehouse (J. A. 287). The actual closing of the plant was also the first notice that either Sales Manager Smith or Route Supervisor Blevins had of the closing. Hunnicutt stated to Blevins that he was going to begin operating the Beckley area out of Princeton for the time being (J. A. 202-204, 240, 241, TR. 467, 468).

There is no evidence indicating that any of the employees had notice of the shutdown prior to October 10. Hunnicutt acknowledged that he never notified the Union of the closing (J. A. 405).

Since the shutdown the Beckley area has been serviced by the Beckley Corporation from Princeton, a fact which will be more fully explained, *infra* (J. A. 114-116, 138, 216-218).

F. Economic Considerations: Heat, Lights and Lavatories

When the Company opened its new plant in March of 1962, some heat, lighting and plumbing work remained to be done but the Company did continue to operate daily. Because of the picket line the contractors refused to proceed with their work (J. A. 232, 233). At the time of the closing no drinks had frozen (J. A. 121, 238, 248, 249). There was no freezing weather in October (J. A. 249, 250).

To Hunnicutt, the primary reason for closing the plant was the lack of heat (J. A. 380). Hunnicutt, when asked when freezing weather came to Beckley, replied, "It will vary . . . anywhere from January 15th on up it gets cold weather" (J. A. 139). There was no freezing weather in October and, consequently no drinks froze (J. A. 121, 238). There were also heating facilities in the plant in October; specifically, there were (1) three gas heaters (J. A. 246), and (2) three salamanders (oil burners) (J. A. 214, 215, 246).

The drinks can be transferred on open trucks with the protection of a tarpaulin only until the temperature falls to 20°F., at which time there is a danger of freezing (J. A. 382, 383). On the day of the stockholders' meeting decision to close, September 24, 1962, the average temperature at Beckley reached 67°F. 5/ On the day the Union

5/ The Trial Examiner officially noticed certain temperatures (J. A. 442). The Union respectfully requests that the Court take judicial notice of the temperature in Beckley on specified dates. The source is the Division of Climatology, United States Weather Bureau, Suitland, Maryland and Asheville, North Carolina. All figures are based on tests taken at the Beckley Veterans Administration Hospital.

first requested recognition, October 5, the temperature was 70° and on October 10, the date of the actual closing, the high temperature was 74°. The average temperature for October of 1962 was 53.9°, with the average October high at 65.3° and the average low at 42.5°. The average temperature for November of 1962 was 41.4° with the average high at 51.0° and the average low at 31.1°. The average for December of 1962 was 34.6°, but in December there were three days of Zero temperature, with one day at 14° below Zero.

In the year 1962, the employees at Beckley worked about eight or ten evenings, at a maximum (J. A. 263, 264, 297, 298).

The lavatories were located on the inside of the building and the septic tank was located outside in the ground. In early May of 1962, a representative of the Health Department visited Beckley and told Hunnicutt that the septic tank should be put in after which Hunnicutt was to call the representative who would then check it. The septic tank was installed but, because of the picketing, all of the lateral beds between the lavatory and the septic tank were not completed. Hunnicutt never called the Health Department back and the representative never returned (J. A. 357, 358, 383-386).

Initially, before the sinks and commode were installed in the plant, the men did not use any facilities but after the installation of those facilities they did use them. However, a "Do Not Use" sign was put up on the lavatory and a board placed

across it (J. A. 358). Supervisor Blevins removed the board and Smith, Blevins and the employees used the facilities consistently from May through to the October closing. After using the lavatory each time the men replaced the board. Subsequent to May of 1962, they were not otherwise instructed not to use the lavatory. Aside from the work that remained to be done outside on the septic tank, the facilities were not out of order and there was no backing up from the tank (J. A. 173, 174, 218, 219, 238-240, 243, 294, 298, 299, 358).

The minutes of the September 24th stockholders' meeting refer to heat and lights but make no reference to lavatories.

G. The Economic Status of the Company, the Removal of the Picket Line, and the Operation of the Beckley Area by the Beckley Corporation out of the Princeton plant

At the time of the closing in October of 1962, the Company's business was equivalent to, and in some matters an improvement over, May 1962 (J. A. 163, 164, 177-179, 210-212, 215, 216, 237, 238, 243, 261, 286, 295, 303, 304, 311, 312, 316-319, 378, 391-393).

The hearing in the case was held in February of 1963. The picket line was removed two months later, in April of 1963, and has not been re-

established. The Company has not opened the Beckley plant again. 6/

Since the October 1962 closing the Beckley Corporation, not the Princeton Corporation, has continued to service the Beckley area from the Princeton plant, a fact which the Company itself noted at the hearing. On an unidentified date, before the Beckley plant closed, Geraldine Taylor moved from Beckley to Princeton and was established at a desk in an office and continued in the capacity of bookkeeper, secretary and treasurer of the Beckley Corporation (J. A. 109, 110, 339-341). A separate desk is reserved for the Beckley Corporation. Mrs. Taylor performs no work for the Princeton Company (J. A. 338, 339). Smith and Blevins are both working for the Beckley Corporation. Smith is now General Manager, instead of Plant Manager, and Blevins continues as Route Supervisor. As before, both Blevins and Smith, together with approximately three other route salesmen, deliver from Princeton to Beckley, forty miles away. None of the former Beckley employees are working for Beckley or Princeton. When the drivers finish their day's work they report to Mrs. Taylor, whereas the Princeton drivers check in with

6/ Since the picket line was removed after the hearing, this fact is not in the actual transcript. After the Board issued its Decision in January of 1964, the Union filed its Request for Reconsideration, drawing the Board's attention to the fact that the picket line was removed after the hearing and that the Company never returned. In its Order Denying Request, the Board stated that the Request "contains nothing not previously considered by the Board." Because we believe that the Board plainly had the right to consider the withdrawal of the picket line, and did so, we do not hesitate to ask this Court to take this fact into account when making its determination (J. A. 468).

Princeton authorities. At all times these drivers are under Beckley's supervision (J. A. 73, 74, 338, 368, 369).

Each morning Smith and Blevins drive from their Beckley homes to Princeton and then deliver products to the Beckley area. At the end of the day, after they check in at Princeton, with Mrs. Taylor, they will return to Beckley (J. A. 217, 218). The same number of trucks, four to six, are working the Beckley area now as they did before the closing. The routes in the Beckley area are being serviced with the same frequency as before October 10 (J. A. 114, 115, 138, 216-218, 376). Since the October 1962 closing, the Beckley Corporation has continued to receive ratings from the Washington Regional Office of the Pepsi-Cola Company indicating how it is faring in comparison to other companies in the area (J. A. 372, 373).

THE BOARD'S CONCLUSIONS AND ORDER

The Board concluded that the Company's threats and promises were unlawful Section 8(a) (1) violations and ordered the election set aside but it did not find that the polling of the employees was violative of the Act. The Board found that the Company violated Section 8(a)(5) by its refusal to bargain with the Union and in its unilateral shutdown of the Plant. The Board concluded, however, that the shutdown was motivated solely by lawful economic considerations and was not in violation of Section 8(a)(3). (Board's Decision 1 and 2). (J. A. 460).

The Board did not order reopening of the Beckley plant nor did it order reinstatement or back pay for any employees at either the Beckley plant or any other of the Pepsi-Cola locations in which Hunnicutt has an interest. It did state that, if the Company ever resumed operations at the Beckley plant, it should bargain with the Union and offer reinstatement to the terminated employees. The Board also modified the Trial Examiner's recommendation that the NOTICE TO ALL EMPLOYEES be posted in the Beckley plant and ordered a copy of the Notice sent to the terminated employees since the plant is now empty (J. A. 461-464).

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, et. seq.) are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a con-

dition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8(a) It shall be unfair labor practice for an employer —

(1) to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in section 7;

(2) to dominate or interfere with the formation of or administration of any labor organization or contribute financial or other support to it:***

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:***

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agree-

ment, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession:***

Representatives and Elections

Sec. 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:***

Prevention of Unfair Labor Practices

Sec. 10(c) *** If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act:***

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any Circuit Court of Appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record of the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

SUMMARY OF ARGUMENT

An Employer violates Section 8(a)(3) of the Act when it closes all or part of its operation if

the shutdown is caused, in whole or in part, by the Employer's desire to avoid a union and collective bargaining. The substantial evidence on the record considered as a whole, including that evidence which the Board failed to consider, demonstrates that the Union's activity, aside from picketing, contributed to the decision to shut down.

The minutes of the stockholders' meeting irrefutably and conclusively prove dual motivation. The shutdown was decided upon because of the "Teamsters Union activity at the plant and not being able to install heat and proper lighting. . . ." (emphasis added). The reasons are given in the conjunctive and are unequivocal in demonstrating that the Union contributed to the decision. The language mirrored the prior activities of the Union and Hunnicutt's threats to employees and supervisors that if the Teamsters ever got in at Beckley he would shut down. The decision reflects the Company's fixed and unalterable determination never to bargain with the Union as indicated by its refusal to bargain with Harris either in May or October of 1962. The stockholders, on September 24, were obviously aware of the Objections to the Election, filed only three weeks before, which, if they had merit, would result in the setting aside of the election. The reference to "Teamster Union activity at the plant" reflects the fact that Union agents were speaking not only to pickets but also to their working replacements and that the possibility of organization of the replacements was a real threat. Neither of these circumstances was imaginary because the election was set aside and the replacements were organized shortly after the stockholders' meeting.

The fact that subsequently Hunnicutt may have called Rebhan to have the picket line removed and his conversations with others does not, in any way, affect the unlawful motivation for this action was taken with reference to the lawful part of the September decision—the presence of the picket line. Hunnicutt's orders to Smith to run out the stock merely represents the initial step in the effectuation of the decision in both its lawful and unlawful aspects. In any event, the days immediately prior to the actual closing constituted a period of hesitation for Hunnicutt, a hesitation which was cured by the signing up of the replacements with the Union. This act, representing the culmination of all of Hunnicutt's union trouble, triggered the actual closing. But, irrespective of the events which intervened, the actual closing on October 10 owes its origin to the unrevoked and unlawful decision of September 24.

Since that decision undeniably demonstrates the presence of dual motivation, a discussion of the valid part of the decision—the picketing problem—is unnecessary. However, a brief reference to the facts indicates the insubstantial nature of the Company's defense.

The Company argued that the picketing prevented the installation of lighting, heating and lavatory facilities. However, there were lighting fixtures in the plant and, in any event, the employees seldom worked at night. As to the lavatories, some work remained to be done on an outside septic tank but the supervisors and employees used the inside lavatories consistently from May to October. With reference to heat,

there were heating facilities in the plant and, in any event, according to Hunnicutt, freezing weather did not visit the region until January. Hence, the precipitous nature of the September decision, months before damaging weather was a threat, demonstrates the trivial nature of the defense.

Any semblance of truth suggested by these defenses is devastated by the fact that the Company has never returned to Beckley although the picket line was removed in April of 1963, and two Springs and one Summer have since passed. The Company is obviously content to service the area from Princeton, only forty miles away, and reap the profits of its wrong. Again, however, regardless of the merit, or lack thereof, in the Company's defense, the fact remains that the Union played a significant part in the September decision which the picketing defense does not negative.

If the Court decides that the Union's presence was a cause, the case should be remanded to the Board for the formulation of an appropriate remedy.

II

If an employer interrogates or polls its employees as to their union membership it is a violation of Section 8(a)(1) of the Act unless (1) it is activated by a bona fide desire to see if the union represents a majority of the employees enabling the employer to decide if it has to recognize the union, and, provided (2) that it does not occur against a background of hostility on the part of the employer against the union.

The Company did not have a good faith intention, when it polled these employees, and it was not determining if it had a duty to bargain precisely because Hunnicutt refused to bargain with the Union after he discovered it did possess majority status.

Further, the polling was unquestionably conducted against a background of the Company's anti-union hostility and the only element which would diminish this factor, assurances against Company reprisal, were absent.

When a union is willing to submit to a secret card check by an impartial third party in order to prove its majority status, it does so only on condition that secrecy be maintained since it owes this obligation to the employees whose employment is jeopardized if the information is revealed. The Union's request that the cards be verified by a clergyman did not license Hunnicutt to determine the individual identifies of the Union adherents.

The effect of the interrogation on the employees and the effect of the information on the Employer's future conduct need not be demonstrated, but it is highly significant that none of the employees who signed the statement are presently working for the Company and the Company is now operating out of Princeton with non-union drivers.

III

If the Court sustains the Board's finding that no 8(a)(3) violation exists, it is requested that the

Court modify the sterile remedy prescribed for the conceded Section 8(a)(3) violation.

The Board does have wide latitude in formulating its remedy but the Order, by statute, must effectuate the policies of the Act; that is, it should restore the situation as nearly as possible to that which would have existed but for the Employer's unlawful conduct. It must make the employees whole and must prevent the Employer from profiting by its own wrong.

The Order fashioned by the Board, which requires the Employer to bargain with the Union only if it ever returns to Beckley is meaningless and accomplishes neither of the above purposes. The instant case is even stronger on its facts than those decisions where the Board has ordered resumption and reinstatement. Here the Company has not subcontracted work or permanently ceased operations but is the same corporate entity, serving the same area, with the same frequency, but with different personnel, namely, non-union employees. The fact that the Beckley Corporation is still operating, qua the Beckley Corporation, was not considered by the Board or the Trial Examiner in their discussion of the remedy and this fact enables the Court to review the remedy. The Trial Examiner's only comment was that the present status of the Company made no difference.

This bold attempt to defeat the rights of its employees and the Union has succeeded for the Company continues to derive the benefits from Beckley without having to bargain with the Union

or employ union drivers. Had the Company recognized the Union, the picket line would have been removed but, instead, it unilaterally chose to close.

A number of alternative remedies are possible in lieu of the Board's Order which is wholly inadequate to the situation and not responsive to the statutory mandate. At the very least the employees should be reinstated with the Beckley Corporation which now conducts its operations out of the Princeton plant.

ARGUMENT

I

Substantial evidence on the record considered as a whole does not support the Board's conclusion that the Company's shutdown was motivated solely by lawful economic considerations.

A. The record unequivocally demonstrates that the Union's activity, besides picketing, contributed to the decision to shut down

It has long been held that action taken by an employer which is permissible when taken for normal business reasons becomes an unfair labor practice when the purpose of the action is to avoid a union or to defeat collective bargaining. National Labor Relations Board v. Exchange Parts Co., 375 U.S. 405. The Act does not permit an employer to cease operations when the action is

motivated by a desire to avoid a union.^{7/} Moreover, a shutdown is unlawful where it partially is the result of lawful economic motivation and partially the result of union activity. A cessation of operations or its analogue, the discharge of an employee, is unlawful if it is caused, in part, by union activity.^{8/} The question before this Court

- ^{7/} N. L. R. B. v. Savoy Laundry, Inc., 327 F. 2d 370 (C. A. 2); N. L. R. B. v. Goya Foods, Inc., 303 F. 2d 442, 443 (C. A. 2), cert. denied, 371 U.S. 911; N. L. R. B. v. Kelly & Picerne, Inc., 298 F. 2d 895, 898 (C. A. 1); N. L. R. B. v. Wallick & Schwalm Co., 198 F. 2d 477, 481 (C. A. 3); N. L. R. B. v. Preston Feed Corp., 309 F. 2d 346, 350 (C. A. 4); Town & Country Mfg. Co. v. N. L. R. B., 316 F. 2d 846, 847 (C. A. 5); N. L. R. B. v. Major, 296 F. 2d 466, 467-468 (C. A. 7); N. L. R. B. v. Williams Motor Co., 128 F. 2d 960, 964 (C. A. 8); N. L. R. B. v. Bank of America, 130 F. 2d 624, 629 (C. A. 9), cert. denied, 318 U.S. 791; N. L. R. B. v. Brown-Dunkin Co., 287 F. 2d 17, 19 (C. A. 10); Contra: Darlington Mfg. Co. v. N. L. R. B., 325 F. 2d 682, 685 (C. A. 4), petition for certiorari granted, 377 U.S. 903.
- ^{8/} See N. L. R. B. v. Preston Feed Corp., 309 F. 2d 346, 349-350 (C. A. 4); Williams Motor Co. v. N. L. R. B., 128 F. 2d 960, 964 (C. A. 8); Butler Brothers v. N. L. R. B., 134 F. 2d 981, 985 (C. A. 7), cert. denied, 320 U.S. 789; Town & Country Mfg. Co. v. N. L. R. B., supra; N. L. R. B. v. Great Eastern Color Lithographic Corp., 309 F. 2d 352 (C. A. 2); N. L. R. B. v. Jamestown Sterling Corp., 211 F. 2d 725, 726 (C. A. 2); Kansas City Power & Light Co. v. N. L. R. B., 111 F. 2d 340, 349 (C. A. 8); Cupples Company Manufacturers v. N. L. R. B., 106 F. 2d 100, 117 (C. A. 8) (Wilbur); N. L. R. B. v. Universal Camera Corp., 179 F. 2d 749, 754 (C. A. 2), reversed on other grounds, 340 U.S. 474; Firth Carpet Co. v. N. L. R. B., 129 F. 2d 633, 635 (C. A. 2); N. L. R. B. v. Whittin Machine Works, 204 F. 2d 803, 805 (C. A. 1); N. L. R. B. v. Erie Resistor Corp., 373 U.S. 221, 227-228; Marshfield Steel v. N. L. R. B., 324 F. 2d 333, 337 (C. A. 8). In Great Eastern, the Second Circuit tacitly overruled its earlier holding in N. L. R. B. v. Rapid Bindery, Inc., 293 F. 2d 170, that discrimination against employees is unlawful only where union animosity is the "preponderant" motive (293 F. 2d at 175). The Second Circuit thus returned to the contrary position which it had taken in Jamestown Sterling, Universal Camera, and Firth Carpet, supra.

is whether the substantial evidence supports the Board's conclusion that the closing was motivated solely by lawful economic reasons. Universal Camera Corp. v. N.L.R.B., 340 U.S. 474. That is, does the substantial evidence indicate that the Union's presence played no part in the decision?

In making its determination the Court must consider not only the evidence considered by the Board but must also take into account "contradictory evidence or evidence from which conflicting inferences could be drawn . . ." and must view the record "in its entirety." Universal Camera Corp., supra. It is submitted that if this Court does what the Board failed to do, and considers the countervailing evidence, including those undisputed facts ignored by the Board, the substantial evidence will plainly demonstrate that the desire to avoid the Union was a contributing factor in the decision.

The minutes of the September 24th meeting conclusively establish that the union activity, aside from the picketing, motivated the Employer's decision to close the Beckley plant. The document refers to "Teamster Union activity at the plant and not being able to install heat and proper lighting due to picket line of the Teamsters Union . . ." (Emphasis added). It is abundantly clear that two elements, not one, were embraced in the decision. The language is in the conjunctive, not the alternative. The reference is not to Teamster Union activity "by way of", "that is" or "namely", the picketing, but to two separate and distinct factors. It is now apparent why Hunnicutt

testified only to the fact that the stockholders decided to shut down on the 24th, without giving any reasons (J. A. 360-362). It was the General Counsel, not the Company, which introduced the Company's minutes over the vigorous objection of the Company and the real reason for that objection is now apparent (J. A. 387-391). For, although the introduction of the document was objected to on the grounds that the minutes "were not germane", it is patently clear that the Company recognized its conclusive nature. It is equally obvious why both the Board and the Trial Examiner failed either to mention, discuss, or resolve, the minutes' reference to dual motivation although the Union consistently raised the issue. This suspicious avoidance of the issue only serves to confirm the instrument's decisive nature. The issue was avoided precisely because it cannot be reconciled with the Board's conclusion.

Although the minutes, standing alone, resolve the question before the Court, and any reference to prior events becomes unnecessary, it is appropriate to consider the background against which the September 24th meeting was held.

The decision reflects two circumstances which hung like a Damoclean Sword over the future of Beckley on September 24th. The first is the fact that Objections to the Election filed with the N. L. R. B. 18 days before, on September 6, a copy of which was served on the Company, would set aside the election if meritorious. Nor was this an illusory possibility for the Board did set aside the election. The fact that a conditional bargaining order was issued in lieu of the customary

ordering of a second election is immaterial for, on September 24, the stockholders could not have anticipated that the Board would depart from its usual re-run election order. Further, Hunnicutt, who was the individual found responsible for the objectionable conduct, knew all too well that the election might be set aside.

The second circumstance was the fact that organization of the replacements loomed large at any time. Union agents had been speaking to both the pickets and replacements and "it was general knowledge all over this part of the country" that the Union was trying to get in at Beckley, according to one Company witness. Nor was this a remote threat for the Union did sign up the replacements on October 5, eleven days after the stockholders' meeting.

Other circumstances are also relevant. Hunnicutt, less than a month before the stockholders' meeting, showed his aversion to the possibility of organization by the Union through his repeated assertions to employees that he would close down rather than deal with the Teamsters. He told Plant Manager Smith to shut the plant if the Union won, and come to Princeton, an invitation which augered a future fact. When Business Agent Harris, in May, asked for recognition on behalf of the striking employees, he was rebuffed by Hunnicutt and told to "go straight to hell." The nature of the motivation was mirrored in the events of September 30, six days after the meeting, when Company Officials Hunnicutt and Taylor indicated their inability to abide a union even if it meant a way of improving business. Again, both

the Trial Examiner and the Board averted any discussion or resolution of the September 30th meeting, which was based on the uncontradicted testimony of a Company supervisor, notwithstanding the fact that the discussion is material in showing the Employer's refusal to accept a union.

Hence, the September 24th minutes do not present the familiar situation where a question of motivation is susceptible of conflicting inferences so that the Court would rule that the Board's inference is supported by substantial evidence even if the Court might have drawn a conflicting one were the case before it de novo. The unequivocal and unambiguous language is susceptible of only one interpretation: Teamsters Union activity, besides picketing, contributed to the decision.

The fact that Hunnicutt called Rebhan in an attempt to have the pickets removed and engaged in other conversations about the heat and lights merely reflects the Company's activity relative to the lawful part of the meeting of the 24th. This conduct was simply action taken pursuant to that aspect of the decision which was valid. More importantly, the conversations occurred after the decision and in no way negate the unlawful motivation which comprised one part of the decision. Similarly, the October 2nd instructions to Smith to lay off the employees were merely an initial step in the implementation of the unlawful decision to shut down.

The events between the September 24th decision and the October 10th closing only confirm

the unlawful motivation as will be demonstrated, *infra*. If, however, Hunnicutt's self-serving statements, such as the Union "had not one little bitty thing, not one little bitty, bitty thing" to do with the closing (J. A. 376, 377), cast any doubt as to the events in that period, it must be remembered that the language of the minutes governed the decision. Absent express revocation of that decision by the stockholders, its legal effect and plain language cannot be altered by subsequent remarks. Nothing on the record negates its dual character.

If anything is proven by events and remarks after September 24th, it is that Hunnicutt hedged in effectuating the unlawful decision and that the closing did not crystalize until the climax of all of Hunnicutt's Union troubles, on October 5th, when the employees signed up with the Union which demanded recognition and bargaining on their behalf. For example, the minutes unqualifiedly directed the plant to close on October 1, but Hunnicutt delayed and operations did not cease until October 10, after the second group of employees signed up on the 5th. Granted that Hunnicutt did start the wheels in motion on October 2, by telling Smith to close out the stock and layoff some employees, he then procrastinated until the employee's selection of the Union on October 5 cured his indecision. Hunnicutt continued to send trailer-loads of drinks to Beckley after October 2 and Hunnicutt's answer that this was stop gap merchandise is not plausible in view of the fact that these were full trailer loads. Regardless of what Hunnicutt called it, it is more than a coincidence that they were steadily sent

over up to and including October 5th, but ceased coming over from Princeton after that day. Indeed, that the October 5th joining of the Union by the replacements was the proverbial straw is clear for upon hearing that the Union represented the employees and had demanded recognition, Hunnicutt immediately told Smith to send the men home and ordered the trailer back to Princeton, never to return. (None of the above undisputed critical facts were resolved by either the Trial Examiner or the Board in their decisions.) Furthermore, a new line of drinks was introduced to Beckley on the October 5th trailer and this incriminating fact is hardly consistent with Hunnicutt's "stop gap merchandise for last minute needs" theory. It evidences an intent to continue—until the Union's request for recognition and bargaining resolved the matter. 9/

That Hunnicutt's indecision was relieved by the Union's bargaining request of the 5th is proven by other circumstances. He told employee Milam, on the evening of the 4th, that perhaps he was not going to be laid off. Smith, on the same night, told Lukach that he didn't know what Hunnicutt was going to do about the Union and Smith

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9/ Hunnicutt denied that new throw-away bottles were on the trailer, creating one of the few evidentiary conflicts. However, the Board and Trial Examiner failed to discuss or resolve the issue, leaving the Court free to draw its own conclusions. It is submitted that Jackson Brown who gave most of the testimony on this issue, and who is an ordained minister (J. A. 146, 179, 180, 183), should be credited over Hunnicutt whose testimony was self-serving and often contradictory. It is noteworthy that the driver of that trailer, Meadows, who did not join the Union but continued to drive for Hunnicutt, never testified for the Company on the issue (J. A. 132, 133).

further informed all the employees that he hoped "we can get this straightened out." Smith told Milam again, on Saturday, October 5, after he had spoken with Hunnicutt at least once, that something might be worked out.

It is noteworthy that on the night of the 4th, Hunnicutt, solicitous towards Milam's welfare, told Milam that he would try to work something out with Smith and that Milam might not be laid off. But on Monday, after Milam and the other employees had designated the Union as their representative, Smith called Hunnicutt to see if Milam should go out and Hunnicutt replied, "Hell no, lay him off."

On October 9, the day before the shutdown, Hunnicutt in his conversation with Jackson, reaffirmed his partially illegal motivation by stating that he would not deal with any union and especially not the Teamsters. On the 10th, the day of the shutdown, Hunnicutt told Brown he was closing down because of the Teamsters. Hunnicutt, during these conversations, also made reference to heat, etc., but again, this was in reference to the lawful part of the September 24th decision and in no way negates the unlawful aspect of it.

It is abundantly clear that Hunnicutt's hedging in the effectuation of the decision was cured by the Union's bargaining request and majority position established on October 5, which was the turning point. However, assuming that the Court concludes that the employees' action of the 5th had nothing to do with the decision already reached and that that decision was a finality, unaffected by

the events of the 5th, the fact remains that the original decision was still unlawful, as evidenced by the minutes of the 24th.

The Trial Examiner found that the Union established a prima facie case but concluded, that, although the matter was "not wholly free from doubt", the shutdown was "mainly caused" by the Union's continued picketing activity (J. A. 442, 448). ^{10/} He further concedes that Hunnicutt's remarks and other action "indicated animosity toward the Union" and "evidenced a fundamental aversion" to recognition of the union and that they "could be construed as indicative of retaliation" (J. A. 441). Yet, he finds the prima facie case is rebutted by certain factors. He states that there was no significant anti-union animus in the May 1962 dispute because Hunnicutt was willing to work with Davis of District 50 of the United Mine Workers Union. The Trial Examiner forgets that anti-union animus is a different animal from anti-Union animus. Hunni-

^{10/} Significantly, the Board promptly changed the Examiner's "mainly caused" conclusion to a finding that it was "motivated solely" by lawful economic considerations. The Board recognized that the Examiner's implicit factual finding that the Union played a part was inconsistent with his legal conclusion that no 8(a)(3) violation existed.

Of course, the Union disagrees with the Examiner's finding that the picketing was the main cause and submits that the substantial evidence shows the Union was the primary factor. The Court, however, need not quantify the factors and engage in a weighing process. The Court's only duty is to determine if the substantial evidence demonstrates that Union activity, other than picketing, was a cause, and if that activity "partly motivated" the Company's action. See Great Eastern Color Lithographic Corp. and Town & Country Mfg. Co. and other cases cited in Footnote 8, *supra*.

cutt's affinity to, and affection for, Davis does not negative his aversion for the Union—with its recognized militancy and effectiveness as a collective bargaining representative. 11/

The Trial Examiner further notes that animus is lacking because Hunnicutt offered Brown a job at Princeton "notwithstanding his known affiliation with the Union" and offered Ronald Keffer a job back if Hunnicutt ever reopened Beckley. Brown turned down the offer but when he later applied at Princeton he could not locate Hunnicutt. More importantly, Brown was Hunnicutt's "best producer", as the Trial Examiner noted, and Hunnicutt clearly recognized the man's value (J. A. 445). Further, even if Brown did accept a Princeton position he was a minority of one and hardly a threat to Princeton's solidly nonunion status. The fact that Hunnicutt may have offered Ronald Keffer a job if the Beckley plant were ever reopened is wholly irrelevant. Hunnicutt then, as now, had no intention of returning to Beckley. That the Company is operating out of Princeton with none of the former drivers and with exclusively nonunion help speaks for his good intentions toward the terminated employees.

11/ Employee Kenneth Keffer once signed a District 50 Authorization card when Smith asked him to do so, at Hunnicutt's request; this was later denied by Smith (J. A. 290, 291). In any event, Section 8(a)(2) of the Act, forbidding certain complicity between employers and unions, was expressly intended by Congress to prohibit alliances suggested, though not proven, by the Hunnicutt-Davis communion.

The Trial Examiner concludes that Hunnicutt's offers to Keffer and Brown "militates against the inference that it was closing down deliberately to hurt them because they had joined the Union" (J. A. 445). The remark misses the point completely for the issue is not one of hurting the employees because they joined the Union but whether, on September 24, the Company decided to close in part because of past and present Union troubles and in anticipation of a future collective bargaining obligation.

Finally, the Trial Examiner holds that the picketing prevented the Company from the installation of additional heating and other facilities. As will be demonstrated, *infra*, this reason was insubstantial, at best. Even assuming, *arguendo*, that they were a factor, it remains that these circumstances are only manifestations of the legal half of the Employer's decision to shut down and neither the Board nor the Trial Examiner has ever demonstrated how this negates the unlawful part of the decision. 12/

B. The Company's defenses are without merit

While it is abundantly clear that the Union was a cause contributing to the cessation of operations, rendering moot the question of the validity of the

12/ The Company in its Answer to the Board's Complaint, prior to the hearing, alleged it was under no duty to keep the plant in operation because of the "economic collapse of the Respondent and because of the inability of the Respondent to complete the construction of said plant" (J. A. 24). The Examiner rejected the "economic collapse" defense. (J. A. 444).

Company's defenses, it would be appropriate to briefly consider the merit of the alleged lack of heating, lighting and sanitary facilities. "The substantiality of evidence must take into account whatever in the record fairly detracts from (the) weight" of the Employer's defenses. Universal Camera Corp., supra, 340 U.S. at 487.

The insignificance of allegedly inadequate lighting and lavatories is conceded by Hunnicutt who held that lack of heat was the primary reason for closing. As to the lights, the Trial Examiner recognized that "poor lighting was apparently not quite as important a factor, because comparatively little work was done in the plant at night" (J. A. 442, 443). With reference to the sanitary facilities, the September 24 minutes, significantly, make no mention of lavatories but only to heat and lights. Accordingly, the Trial Examiner stated that "incomplete sanitary facilities may not have been a weighty factor at the time of the September decision to close" and noted further that the employees and supervisors used these facilities. ^{12a/} Although Hunnicutt may have told them not to use them in May, there is no evidence that he later stopped them and he obviously acquiesced in their utilization. The Trial Examiner also recognized, as the Union argued, that the local health authorities never took steps to make Hunnicutt complete the unfinished work on the septic tank. But the Trial Examiner held that while it may not have been a factor in September, the condition "loomed large in October, with the approach of freezing weather." (The septic tank was partially exposed to the open air). This analysis overlooks (1) the fact that the Com-

^{12a/} This language is part of footnote 21 in Trial Examiner's Intermediate Report. The printer, however, inadvertently omitted this footnote from the Joint Appendix. The Board in its Brief has printed the footnote in full.

pany decided to close in September, not in October, and at the time of the September 24th decision, the critical date, the stockholders did not refer to lavatories; and (2) in any event, the temperature on September 24, was 67°, on October 5th it was 70° and on October 10, it reached 74°. Certainly, in coming months it would become colder but it is erroneous to say that on September 24th, or even October 10th, freezing weather "loomed large."

The inadequacy of the heating facilities was very definitely a factor, it is stated, because the drinks might freeze during the winter. The Trial Examiner used the reference point for the freezing of carbonated beverages at the customary 32°F. but Hunnicutt placed it at 20° and that even when the drinks were on a truck, covered only by a tarpaulin. Hence, inside an enclosed warehouse, however poorly heated, the drinks would presumably not freeze until even a lower temperature was reached. However, irrespective of whether 32°, 20°, or lower figure is used as the reference point, Hunnicutt conceded that freezing weather did not come to Beckley until January. It necessarily follows that cold weather was not imminent. The decision of September 24th was made on a day when the temperature reached 67°. Even in October, the average temperature was 53.9° and in November it was 41.0°. No drinks had frozen in the warehouse and, while this was a future possibility, it was not a present danger. The precipitous nature of the closing during September makes manifest the insubstantiality of the Company's claim. The Union was con-

siderably closer to Beckley and more of an immediate threat than was the cold weather. 13/

It is significant that the picket line was removed in April of 1963, fourteen months ago, yet the Employer has never returned to Beckley. Its failure to do so belies its representations (at the hearing) that the picket line was the only cause of its removal and its implied representation that it would return when the union trouble ended (J. A. 437, 444; 377).

The Union submits that the Company's failure to reopen its Beckley operation when the alleged obstacle had been removed demonstrates its bad faith shutdown. The Company's failure to return reveals its awareness that if it returns to Beckley, it must face a bargaining obligation whereas it now can comfortably operate out of Princeton, without a union, and continue to reap the Beckley profits.

At the risk of reaching tedium on the point, the Union must re-emphasize to the Court that, even if it disagrees with the Union's demonstration of the secondary and subordinate nature of the "inadequate facilities" defense, the fact remains that the Union's past, present and anticipated activity was an acknowledged factor in the September 24th decision.

13/ The Board, in its Decision, stated there was "an absence of heating, lighting, and sanitary facilities." (J.A. 461) This conclusion is patently false for there were light fixtures, there were usable lavatories and there were three salamanders and three gas heaters.

The substantial evidence proves conclusively that the Board erred in concluding that the Union's activity, aside from picketing, played no part in the decision to close. Rather the record on the whole demonstrates that the Company's desire to avoid the Union motivated, in part, its decision to shut down. If the Court finds a violation of Section 8(a)(3) of the Act it is requested that the case be remanded to the Board for the fashioning of an appropriate remedy.

II

The Board erred in finding that the Company's polling of its employees did not constitute unlawful interrogation in violation of Section 8(a)(1) of the Act.

Interrogation of employees as to their union membership is a violation of Section 8(a)(1) of the Act. Joy Silk Mills v. N.L.R.B., 87 D.C. App. 360, 185 F. 2d 732, cert. denied, 341 U.S. 914. This Court, in support of its conclusion, in Joy Silk Mills cited Standard Coosa-Thatcher Company, 85 N.L.R.B. 1358, wherein the Board held that interrogation or polling of employees concerning their union membership or activities was a per se violation of the Act. However, the Board abandoned this rule in Blue Flash Express, Inc., 109 N.L.R.B. 591, where it was held that the test is whether, under all the circumstances, the interrogation is unlawful. This Court, since Blue Flash, has sustained the Board's findings of unlawful interrogation in Operative Potters v. N.L.R.B., 116 D.C. App. 35, 320 F. 2d 757, and W. W. Chambers Company v. N.L.R.B., 108 U.S. App. D.C. 43, 279 F. 2d 817.

In Blue Flash, the Board considered those circumstances which bear on the validity of polling or interrogation, viz., (1) whether the questioning had a legitimate purpose; (2) whether there was an assurance against reprisals; and (3) whether the questioning occurred in a background free of employer hostility towards union organization. The Company has failed to meet any of those three conditions here.

First, the only legitimate purpose of polling employees is to enable an employer to determine if the union represents a majority of its employees so that the employer can decide if it has an obligation to bargain. Hunnicutt, when he discovered that the Union did represent a majority, did precisely the opposite and refused to recognize the Union. Clearly his purpose was not to determine what his obligation was for once he did discover his duty he rebuffed the union, bringing about the subsequent crisis which could have been avoided had he obeyed his statutory obligation. It is also clear that no assurances against reprisal were given and that there was an undisputed background of hostility towards the Union.

That Hunnicutt did not have a genuine desire to ascertain the Union's majority status and was interested solely in who was for the Union is evidenced by his admission that he specifically instructed Smith to "find out if those four men were in it that we laid off on Thursday morning." The Trial Examiner's suggestion that Hunnicutt merely wanted the statements to compare them with the authorization cards because Union Agent Harris had suggested a verification, even if true, is not

a valid defense. Harris suggested a card check by an impartial third party — a clergyman — and not a unilateral investigation by Hunnicutt. Neither Harris nor any other responsible union official intends a suggestion of verification to be a license for an employer to determine the identity of union adherents. The secrecy which unions pledge to employees concerning their signing of authorization cards is the fundamental law of organizing if the employees are to be protected against reprisals. The fact that the names of the union members were later indicated on the verification by the Justice of the Peace does not negative the violation. For, at that time, the interrogation of each employee and the employee's response was a fait accompli. The Company already knew the identities of the Union adherents and the violation was complete.

The Trial Examiner further supports his conclusions on the grounds that "at least one employee, Ronald Keffer, indicated in testimony that he knew when he gave his statement" to Smith that it would be used in a card check. However, "it has been consistently held that the question is not whether an employee felt intimidated but whether the employer engaged in conduct which may reasonably tend to interfere with the free exercise of employee rights under the Act." Joy Silk Mills, supra. Hence, it is not necessary to prove the effect on the employees or that the Employer used the information received to discriminate against employees. Yet it is hardly surprising that, on October 4, Dallas Milam was told by Hunnicutt that perhaps he would not be laid off and Hunnicutt would try to work something

out with Smith but, on October 8, after Milam had signed the statement for Hunnicutt and filled out a union card, Smith asked Hunnicutt if Milam should work and Hunnicutt responded, "Hell no, lay him off." Neither is it coincidental that none of the employees who signed the statements are now working for the Beckley Corporation in Princeton whereas supervisors Smith and Blevins and non-Union driver Meadows are employed.

The polling, under all the circumstances, and in light of Hunnicutt's other extensive 8(a)(1) misconduct, is plainly violative of the Act. The remedy, if the Court agrees, is simply a modification of the Notice to all Employees, and is of no material value to the Union or the employees. It will, however, remove a dangerous precedent and re-affirm the confidence that employees must have in the Act's protection.

III

The Board's Remedy does not effectuate the policies of the Act.

Under Section 10(c) of the Act, the Board has broad discretion in the formulation of remedial orders. Phelps-Dodge Corp. v. N.L.R.B. 313 U.S. 177, 194-195; N.L.R.B. v. Seven-Up Bottling Co., 344 U.S. 344, 346-347. It must always, however, obey the statutory mandate which requires it "to take such affirmative action . . . as will effectuate the policies of the Act." (Section 10(c) of the Act.) The only issue is "what order does, and what order does not, bear appropriate relation to the policies of the Act."

Seven-Up Bottling Co., supra., 344 U.S. at 348. Hence, although "the Board's discretionary authority to fashion remedies to purge unfair labor practices necessarily has a broad reach, that discretion is nevertheless 'contained by the requirement that the remedy shall be appropriate and shall be adapted to the situation which calls for redress'" N.L.R.B. v. District 50, United Mine Workers, 355 U.S. 453, at 450. Specifically, the remedial order should effect a "restoration of the situation, as nearly as possible to that which would have obtained but for (the unfair labor practices)". Phelps-Dodge, Corp., supra., 313 U.S. at 194. Accordingly, the remedy must accomplish two purposes: it should redress as far as possible injuries inflicted and simultaneously prevent the offender from profiting from his own wrong. Of course, the remedy cannot impose an inordinate burden on the guilty party and it should conform itself to the circumstances of the case.

The Union, for the purpose of this argument, assumes that the Board's failure to find a violation of Section 8(a)(3) will be sustained. In that event, the Union complains of the remedy fashioned for the acknowledged violation of Section 8(a)(5) since it does not effectuate the policies of the Act. 14/ The Order is limited to instructing

14/ The Board found that the unilateral shutdown and the failure to bargain with the Union, after its October 5 request, was a violation of Section 8(a)(5). This Court has held that the subcontracting of maintenance work, without bargaining, is a violation of Section 8(a)(5) even if the decision is the result of bona fide economic reasons. Fibreboard Paper Products Corp. v. N.L.R.B. 16 D.C. App. 198, 322 F. 2d 411, cert. granted, 375 U.S. 963.

the Company to bargain with the Union and offer employment to the terminated employees if it ever returned to Beckley.

Immediately after refusing to recognize the Union or bargain about the closing, activity which the Board found to be unlawful, the Company shifted to Princeton, forty miles away. It has continued to serve the Beckley area from the Princeton plant daily with the same frequency as before. Hunnicutt informed Jackson Brown, on the day of the closing, "that as far as (you) or any other employee of Beckley was concerned that the Beckley Corporation had been dissolved." (J. A. 161). Yet the record makes clear that as far as Hunnicutt and the Beckley Corporation is concerned, the operation has stayed in business. This is the classic case of a runaway shop which remained from whence it came. The Company has its own designated work area in Princeton; it maintains a bookkeeper and officers; Supervisors Blevins and Smith still retain their titles as Beckley's General Manager and Route Supervisor; the Beckley drivers report to Mrs. Taylor and not to the Princeton authorities as do the Princeton drivers; and the Beckley Corporation receives ratings from the Washington Regional Office. This evasion of the duty to bargain is alone offensive but the Company has intensified the effect of its violation by replacing the Beckley drivers, laid off between October 5 and 10, with other

drivers. It has merely substituted nonunion employees for known union adherents. 15/

The six employees who joined the Union are thus without jobs and the Union is without bargaining rights, although the employees did receive a copy of the Notice chastising the Company after the Trial Examiner ordered only that it be posted in an empty unused plant. Meanwhile, Hunnicutt comfortably continues to reap the profits of his own wrong. He refused to bargain with the Union and now runs the Beckley Corporation from his office in Princeton without any fear of having to negotiate with the Union.

It is difficult to imagine a more sterile remedy which fails to effectuate the Act's policies and which encourages violation of both the statute and public policy. The present case is a classic "exercise in futility" which the Board once

15/ Neither the Board nor the Trial Examiner, in their decisions, considered the fact that the Company continues in business as the same corporation, except that the Trial Examiner did state that this action was not alleged by the General Counsel to be unlawful (J. A. 446). The Trial Examiner's only other comment occurred at the hearing when he stated "what difference does it make where (the Company) went." (J. A. 339). The Company's continued existence has nothing to do with the 8(a)(5) violation once that violation is established but it is clearly the crucial issue when discussing remedies. The decision to order an employer to resume operations invariably hinges on whether or not he has permanently gone out of business for, if so, a resumption remedy is considered harsh. However, where, as here, the operation has merely changed locations neither the courts nor the Board has hesitated to order a strong remedy for an 8(a)(5) violation. Since neither the Trial Examiner nor the Board discussed or resolved this critical fact, the Court is free to consider its relevance in modifying the remedy.

cautioned against. Town and Country Mfg. Co., 136 N.L.R.B. 1022, 1030. The remedy hardly is one which is "adapted to the situation which calls for redress". (N.L.R.B. v. Mackay Radio & Telegraph Co. 304 U.S. 333, 348.) The Board has failed in its duty to mould a remedy "suited to practical needs." (Seven-Up Bottling Co., supra, 344 U.S. at 351-352.)

This Court, in Fibreboard Paper Products, supra, properly recognized both the requirement and advantages of notice and bargaining before an employer effectuates an "economic" decision terminating part of its operation. If Hunnicutt had recognized and negotiated with the Union on or after October 5, pursuant to his statutory obligation, he would have discovered that the existence of a lawful bargaining representative had improved, and not diminished, the prospects of a successful resolution of the picketing question. Indeed, it is the tragedy of this case that, had he done so, this matter would not have been litigated and the employees would still be employed. The picket line would surely have been removed for removal was the obvious quid pro quo for recognition. Even if the picket line was not disestablished simultaneous with the granting of recognition, the Company was still required to negotiate with the established majority representative and some mutually acceptable solution, a rapprochement, could have been achieved. For all the Union desired and deserved was recognition and the picket line would have become an anachronism after recognition was granted, as Hunnicutt knew all too well. Yet Hunnicutt shunned the Union in the five day period

between the time that the bargaining duty accrued on the 5th and the shutdown on the 10th. Indeed, Hunnicutt asked, at the hearing, "why should I work out anything with the Teamsters?" (J. A. 379)

Nor can Hunnicutt's refusal to discuss the matter, as that refusal affects the remedy question, be justified on the theory that he already had sought the removal of the picket line in his October 1 conversation with Union Agent Rebhan. For Hunnicutt never notified Rebhan of his intentions to close, never even threatened Rebhan with an ultimatum. Rebhan was never called again nor was notice given to the Union about the closing. Indeed, neither Smith, Blevins, nor the employees knew of the coming shutdown. Clearly, the Union was not going to give up the picket line at Hunnicutt's request in the absence of an announcement by him that he would close down as an alternative. The picket line was the Union's only weapon, economic or legal, on October 1, and the Company could not legally control its continued existence since the Company could not legally recognize the Union. However, after the Union achieved its majority status on October 5, the Company was responsible for the continued existence of the picket line and it could have removed it through the simple expedient of obeying the law by recognizing the Union.

Since the picket line was removed in April of 1963, it is clear that the Employer does not intend to return and is content to service Beckley from Princeton, making the remedy an empty formality.

Just as the Board may occasionally exceed its competence and grant too much, it sometimes grants too little. It is requested that the Court modify the remedy so as to achieve a result which will effectuate the Act's policies. The order should restore the status quo ante as nearly as possible to that which would have obtained but for the illegal decision thereby nullifying the effect of the Company's conduct and preventing its enjoyment of the advantages gained thereby.

The general rule that courts should not substitute their judgment for the Board's is not applicable here where the Board and the Trial Examiner failed entirely to consider the fact that the Company has continued in business from a convenient location forty miles away. Hence, the Union respectfully submits that the Court modify the remedy to achieve a more equitable result. The following alternatives are suggested:

(1) The Company should be ordered to resume operation in Beckley, with reinstatement and back pay, less earnings, to the terminated employees. Upon reopening, the Company should bargain with the Union about any subsequent determination to shut down. Such an order makes the employees whole for their loss of earnings which would not have been lost but for the unlawful refusal to bargain. Nor does it impose an undue burden on the Company for it is only required to bargain about the closing and it does not have to make a concession. If, after bargaining with the Union, it still decides to close for lawful reasons, it clearly may do so. The temporary resumption of operations at Beckley until the question is re-

solved is no hardship and would probably even be convenient, since the Company is now servicing the area from Princeton. If the Company is not required to restore the status quo ante, before bargaining about whether to close the plant, the result is that hereafter this and other employers would not have to bargain at all, notwithstanding the probability that timely good faith bargaining would have resulted in the plant staying open and the employees retaining their positions.

In the event the Court does not order this full remedy it should at least correct the order and eliminate its worst inequities.

(2) The most obvious way is to reinstate the employees, with back pay, with the Company as it now is operating out of Princeton. Had the Company offered all the terminated employees jobs the present problem would not exist but instead they were replaced. Such an order imposes no burden whatsoever on this Company. Nor are the present employees prejudiced since they deprived the terminated employees of their jobs and the rights of the latter clearly are paramount to the former. Moreover, Hunnicutt should easily be able to procure employment for these non-Union employees in the Princeton plant or one of his other corporations; or

(3) Offer reinstatement with back pay to the terminated employees at one of Hunnicutt's other Pepsi-Cola locations; or

(4) Offer the employees reimbursement for all earnings lost as a result of the Company's

unlawful shutdown until they are able to secure substantially equivalent employment elsewhere.

In any event, the Union should be granted immediate bargaining rights with the Company since it is still an operating entity. The Union is the collective bargaining representative and this is so irrespective of whether the Company is operating out of Beckley or Princeton. The Company must not be allowed to evade its obligation simply by shifting its bookkeeper to another location while continuing to service the same customers as before. For the Board to permit this evasion, without proper redress, is unprecedented.

The above circumstances compel a modification which is both rational and equitable. The pro-Union employees have been discharged but the unit jobs remain and the Company continues to harvest the gains with non-Union substitutions while the terminated employees remain among West Virginia's many unemployed. The Company represented that it would return to Beckley when the Union trouble ended. The Board impliedly relied on these representations in fashioning the order but, with the pickets long since removed, it is apparent that the Company will not return and the representations become misrepresentations.

Where an employer discontinues all or part of its operations, for bona fide reasons, but without notice and bargaining, the Board has ordered both a resumption of operations and reinstatement with back pay. Fibreboard Paper Products (138 NLRB 550) and Town and Country, supra. The

Board has stated that this remedy, far from being extraordinary in application, is its "usual order" which it will "ordinarily" make in such circumstances. (Renton News Record, 136 NLRB 1294) It is noteworthy that the Board ordered resumption and reinstatement, in Fibreboard, since "the maintenance operation is still performed in much the same manner as it was prior to the subcontracting arrangement." This is precisely the situation which obtains in the instant case. It is incomprehensible that the Board should allow such an inequitable situation to prevail where an employer continues to benefit from its transgressions and the jobless employees are handed a meaningless order.

It is requested that this Court bring its expertise and experience to bear in the modification of this paper remedy.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition herein be granted and the Board's Order be set aside.

Respectfully submitted,

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BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 18,447

FILED JUN 11 1964

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION
No. 175, INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELP-
ERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Set Aside an Order of
the National Labor Relations Board

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QUESTIONS PRESENTED

The questions presented are in the prehearing conference stipulation (J.A. 467-477), and are as follows:

1. Whether substantial evidence on the record considered as a whole supports the Board's conclusion that the Company's shutdown was motivated solely by lawful economic considerations.

2. Whether the Board erred in finding that the Company's polling of its employees did not constitute unlawful interrogation, in violation of Section 8(a) (1) of the Act.

3. Whether the Board's remedy effectuates the policies of the Act.

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IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,447

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION
No. 175, INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELP-
ERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Set Aside an Order of
the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

COUNTERSTATEMENT OF THE CASE

This case is before the Court on the petition of the
Union to review and set aside an order of the Nation-

al Labor Relations Board issued pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151 *et seq.*), against Pepsi-Cola Bottling Co. of Beckley, Inc., (hereafter, "the Company"). The Board's decision and order (J.A. 459-467),¹ issued January 3, 1964, are reported at 145 NLRB No. 82. This Court has jurisdiction under Section 10(e) and (f) of the Act.

I. The Board's Findings of Fact

Briefly, the Board found that the Company violated Section 8(a)(1) of the Act by promising benefits and threatening reprisals to influence a representation election. The Board also found that the Company refused to bargain with the Union and unilaterally shut down its warehouse, in violation of Section 8(a)(5) and (1). In addition, the Board found that the Company did not otherwise violate the Act by obtaining certain statements from four employees confirming their union affiliation and by discharging employee Kenneth Keffer for having damaged a company truck. Finally, the Board found that the Company acted to shut down its plant, not to avoid dealing with the Union, but for lawful economic considerations. Only this last determination, the one as to the statements, and the Board's order are questioned herein (J.A. 476-477). The evidence upon which the Board's

¹ "J.A." references are to the Joint Appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

findings rest may be summarized, in pertinent part, as follows:

A. Background—events following the Company's move into its new warehouse

The Company, which is engaged in the sale and distribution of bottled drinks in Beckley, West Virginia, had formerly been located in an old building (J.A. 417, 423; 104-105). In 1961, the Company began construction of a new warehouse, into which it moved in April 1962² although construction had not yet been completed (J.A. 423; 106, 113-114). The shell of the building was completed to the extent that it could be used as a warehouse during warm weather, but the contractors had not yet installed permanent heating or lighting facilities, nor had they finished the installation of the septic tank for sanitary facilities (J.A. 423-424; 140-141, 246-248, 357-360). The building contained only one or two portable stoves and a few strings of unshaded light bulbs left by the contractor (J.A. 424; 358-360).

The same month the Company moved into the new building, a labor dispute arose, during the course of which its employees engaged in an economic strike, picketed the warehouse, and joined the Union (J.A. 418; 32-33, 35, 84, 348-351). The Company hired new employees to replace the strikers³ and continued

² Unless otherwise noted, all events herein occurred during 1962.

³ These replacements were Kenneth Keffer, Jackson Brown, Jack Goad, William Lukach, Dallas Milam and John Davis (J.A. 419, n. 4). Ronald Keffer, who had been employed prior

its operations (J.A. 418; 37-38, 234). However, the contractors' employees refused to cross the picket line and construction work on the unfinished building ceased (J.A. 424; 220, 233, 271). Picketing at the Company's warehouse continued throughout all the events herein; construction work did not resume, and the building was never completed (J.A. 271).

Two days before the election, the replacements, concerned about the effect the election might have on their jobs,* told Plant Manager Kyle Smith that they wanted to talk to Vice-President H. P. Hunnicutt (J.A. 419; 187, 221). Smith arranged the meeting for that evening, and all seven employees drove over to Hunnicutt's office in Princeton, West Virginia. During the course of this meeting, Hunnicutt disparaged the Union, calling it "a gang of thugs," urging the employees to vote against it, and stating that he would not "work under the Teamsters." He also told them that he had \$1900 to use for advertising at Beckley but that he would not use any money for that purpose as long as the Union was in the picture. In response to several complaints, Hunnicutt promised the employees that conditions would improve if the Union lost the election, but that if the Union won he would close the warehouse (J.A. 418-422; 147-149, 168-171, 252, 296, 305-306).

to the strike as a warehouseman, did not join the strike and continued to work (J.A. 31).

* They discussed among themselves the possibility that, if the Union won the election, it would seek the reinstatement of the strikers, to the detriment of the replacements (J.A. 419; 221).

B. *The decision is made to close the Beckley warehouse*

As noted above, the Union lost the election which was held on August 31 and filed timely objections. On September 24, while these objections were pending, the Company's stockholders met and authorized the closing of the Beckley operation on October 1, because the Union's picket line had prevented the installation of heat and lighting facilities and had thus made it impossible to operate further (J.A. 424; 361-362, 414).⁵ A week later, on October 1, in an effort to avoid closing the warehouse, Hunnicutt met with Union Representative Frank Rebhan and asked him to remove the picket line at Beckley long enough to enable the contractors to install heating equipment to prevent the freezing of bottled drinks during the coming winter. Rebhan flatly refused, stating that the pickets would remain at Beckley all winter long, if necessary (J.A. 424-425; 118-119). That same day, two of the Company's stockholder-officers, Mr. and Mrs. John S. Taylor, Jr., inspected the Beckley warehouse. The next morning, October 2, they reported to Hunnicutt

⁵ The relevant portion of the minutes of that meeting reads as follows (J.A. 414):

Anne S. Hunnicutt, President, Acting Chairman of the meeting advised concerning the Teamsters Union activity at the plant, and not being able to install heat and proper lighting in the plant due to the picket line of the Teamsters Union, it is impossible to operate from this plant.

After general discussion, it was, upon motion duly made by John S. Taylor, Jr., seconded by H. P. Hunnicutt, and unanimously carried, it was RESOLVED, that sales and service would not be carried on from the plant, and the plant would be closed October 1, 1962.

that they had found the Beckley employees dissatisfied, complaining about the lack of heat and poor lighting; they also said that the employees were mishandling products and breaking bottles due to the lack of light (J.A. 424-425; 330, 343, 353, 365-366, 387). After being advised by two officers of the Princeton corporation* that the warehouse could not be operated without proper heat, light or toilet facilities, Hunnicutt called Smith and ordered him to lay off the Beckley employees on October 4, keeping only two employees to help him "run out the stock" (J.A. 425; 329-332, 366-367).

C. The closing of the Beckley warehouse

On October 4, after the drivers had returned to the warehouse from their routes, Smith informed them that the Beckley operation was to be closed and that he had been directed to lay off all but two of them (J.A. 426; 204, 208-210, 226-227, 307-308). He stated that he would have to let driver Kenneth Keffer go because of a past accident (J.A. 426),⁷ and he selected the two next most senior employees, Ronald Keffer and Jackson Brown, to help him run out the stock (J.A. 426; 309). After leaving the warehouse,

* There were four companies operating Pepsi-Cola distributorships, in Beckley, Princeton, Parkersburg, and Alderson, West Virginia; each company was a separate corporation. Hunnicutt's office was at the Princeton plant.

⁷ Kenneth Keffer, who was under 21, had been in an accident 3 months before, and the Company's insurance carrier had notified Hunnicutt early in October that he could no longer drive a truck (J.A. 449).

driver Dallas Milam called Hunnicutt and asked if he was sure that he (Milam) was to have been laid off. Hunnicutt told Milam not to worry, that he would call Smith and see what they could work out (J.A. 426-427; 309-311). Milam then returned to the warehouse and asked Smith if Hunnicutt had called. When Smith replied that he had not, Milam sought out Union business agent Kermit Harris, told him about the layoffs, and joined the Union (J.A. 427; 41-43, 312, 407). The next day, October 5, Harris visited the picket line at the Beckley warehouse; the two Keffers and Brown were working. While Harris was in the vicinity of the warehouse, employees Brown, Lukach, the two Keffers and Davis spoke to him and all signed union authorization cards that day (J.A. 427; 43-48, 408-412).

Harris then informed Smith that he had signed up the employees and requested a meeting to negotiate an agreement for their future working conditions (J.A. 427; 53-54). Smith called Hunnicutt and informed him of this request, but Hunnicutt made no reply at this time to the Union's demand (J.A. 427-428; 193-194). Before leaving that day, Harris asked if Smith wanted the employees' signatures on the authorization cards verified by a clergyman or some other responsible person; Smith replied that it would not be necessary (J.A. 428; 57).

That evening, Smith called Hunnicutt and reported Harris' suggestion about verifying the authorization cards. Hunnicutt replied that it was a good idea, but he also directed Smith to obtain signed statements

from the employees that they had joined the Union, for the purposes of comparison with their cards (J.A. 428: 190-191, 369). The next day, October 6, Smith told four of the employees of Hunnicutt's request: all four—the two Keffers, Brown and Davis—executed statements (J.A. 429: 153-154, 190-191, 251). When Harris arrived later that day, he and Smith took the cards and statements to a local justice of the peace, who certified their authenticity (J.A. 429; 59-64, 193, 413). Harris then requested bargaining, and asked Smith to relay Hunnicutt's reply as soon as possible. On October 7, Smith advised Harris that Hunnicutt would not meet and bargain with the Union (J.A. 429-430; 67, 69).

On Monday and Tuesday, October 8 and 9, employees Brown and Ronald Keffer made deliveries from the Beckley warehouse (J.A. 430; 158-159). On October 9, Union business agent Robert Jackson called Hunnicutt, informed him of the verification of the authorization cards, and requested recognition as the employees' bargaining agent. Hunnicutt replied that he was closing down the warehouse because it could not be operated without heat, light or proper sanitary facilities and, therefore, that he would not deal with the Union (J.A. 431; 90-94, 134-136).

On October 10, Brown and Ronald Keffer were driven to Hunnicutt's office, where they were told that the Beckley warehouse was being closed that day because it could not be operated during the winter without heat, light or proper sanitary facilities. Hunnicutt told them that they could "thank the

Teamsters for the plant being closed down" and he expressed regrets about the men's loss of employment. He told Keffer that if the warehouse ever reopened he would be among the first hired, and he offered Brown a job at the Princeton plant, which Brown rejected (J.A. 431-432; 160-162, 257-258, 370-371).

The Beckley warehouse was closed on October 10 and has not been reopened. Since that date, the Company has serviced the Beckley area by five trucks operated out of the Princeton plant, some 40 miles away (J.A. 432; 114-115, 138).

II. The Board's Conclusions and Order

On these facts, the Board concluded that the Company violated Section 8(a)(1) of the Act by Hunnicutt's preelection threats and promises to the employees, and that it violated Section 8(a)(5) by refusing to bargain with the Union, on and after October 7 (J.A. 433-434, 438, 448, 460). The Board concluded, however, that the Company did not violate Section 8(a)(3) and (1) by shutting down the Beckley operation, finding that the closing was impelled by economic, and not anti-union, considerations (J.A. 448, 461). The Board further concluded that the Company's procuring of statements from the employees regarding their execution of union authorization cards was not, in the circumstances, violative of Section 8(a)(1) (J.A. 439)."

* The Board also found that certain of Hunnicutt's other preelection statements were not violative of the Act, and that the discharge of Kenneth Keffer was for cause (J.A. 433, 451). These findings are not involved in this proceeding.

The Board ordered the Company to cease and desist from the unfair labor practices found; it also set aside the election of August 31. Affirmatively, the Board ordered the Company, in the event it resumes operations at its Beckly warehouse, to bargain with the Union and to reemploy the employees dismissed because of the shutdown. The Company was further directed to mail copies of the appropriate notice to each of the employees. (J.A. 463-464).

SUMMARY OF ARGUMENT

I. The record shows that the Company's decision to shut down its Beckley warehouse was economically motivated. The Union's picket line had effectively prevented completion of construction on the Company's new warehouse building, and from May until October 1962, the building was without adequate heating, lighting and sanitary facilities. On September 24, the board of directors authorized the closing of the warehouse because, with winter coming, the warehouse could not be effectively operated. On October 1, Vice-President Hunnicutt made a final attempt to keep the warehouse open. He asked Union Representative Rebhan to lift the picket line temporarily to permit the contractors, whose employees would not cross the picket line, to complete work on the building. Rebhan refused, saying that the pickets would remain all winter long, if necessary. The next day, October 2, Hunnicutt ordered the warehouse closed, following Rebhan's refusal to lift the picket line, the report of two stockholder-officers who had in-

spected the Beckley warehouse and had reported on employees complaints and adverse working conditions, and the advice of two associates who said that the warehouse could not be operated through the winter with inadequate heating, lighting and sanitary facilities. The closing was announced on October 4; that evening, one of the employees joined the Union, and the next day the others joined. The warehouse was closed on October 10, the delay being due to an effort to run out the stock.

These circumstances amply support the Board's conclusion that the *prima facie* case of discriminatory motivation (based on the Company's pre-election threats and promises which were found to be violative of Section 8(a)(1)) had been rebutted, and that the shutdown was economically motivated.

II. On October 5, the employees told Plant Manager Smith that they had joined the Union. The next day, Smith asked four of them to sign statements to that effect, in order to obtain verification of the Union majority status from a local justice of the peace. The Board properly found that this request, with which the employees complied, did not constitute unlawful interrogation within the purview of Section 8(a)(1), for the employees had merely been asked to affirm in writing what they had freely revealed the night before.

III. The Board having properly found that the shutdown was not discriminatorily motivated, its order directing the Company to bargain if it resumes operations at Beckley adequately remedies the un-

lawful refusal to bargain. The unlawful nature of the shutdown decision and the fact that it was reached well before the Union had even begun to organize the employees and thus well before the obligation to bargain matured, led the Board to reject the Union's contention that a resumption-of-operations order should be issued. In *Fibreboard Paper Products Corp.*, 138 NLRB 550, where such an order issued to remedy a refusal to bargain violation, the Board noted that the employees' loss of employment "stemmed directly from the employer's unlawful action in bypassing their bargaining agent." 138 NLRB at 555. No such showing can be made here. Hence, as in two other recent cases (*Renton News Record*, 136 NLRB 1294; *Lori-Ann of Miami, Inc.*, 137 NLRB 1099), the Board properly declined to order a resumption of operations to remedy a refusal to bargain. As the Board's order is "adapted to the situation which calls for redress" (*N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 348), it is entitled to affirmance.

ARGUMENT

As the Company has complied with all provisions of the order issued against it, enforcement of that order is not being sought in this proceeding. The Union, however, contends that the Board erred: (1) in not finding that the closing was discriminatory and violative of Section 8(a)(3) and (1); (2) in not finding that the polling of employees as to their union sentiments constituted unlawful interrogation in

violation of Section 8(a)(1); and (3) in not ordering the Company to resume its Beckley operation. We deal with these contentions below.

I. Substantial Evidence Supports the Board's Finding That the Company Terminated Its Beckley Operation for Economic, and not for Discriminatory, Reasons

It is settled law, as petitioner points out (Br., pp. 32-33), that an employer violates Section 8(a)(3) and (1) of the Act when it closes all or part of its operations in order to avoid dealing with a union, or to frustrate its employees' statutory rights, or otherwise to discriminate against its employees. See, e. g., *Town & Country Mfg. Co. v. N.L.R.B.*, 316 F. 2d 846, 847 (C.A. 5); *N.L.R.B. v. Preston Fced Co.*, 309 F. 2d 346, 349-350 (C.A. 4); *N.L.R.B. v. Kelley & Picerne, Inc.*, 298 F. 2d 895, 898 (C.A. 1); cf. *East Bay Union of Machinists, Local 1304 v. N.L.R.B.*, 116 U.S. App. D.C. 198, 202, 322 F. 2d 411, 415, company petition for certiorari granted *sub nom. Fibreboard Paper Products Corp. v. N.L.R.B.*, 375 U.S. 963, union petition for certiorari denied, 375 U.S. 974; but see *Darlington Mfg. Co. v. N.L.R.B.*, 325 F. 2d 682, 685-687 (C.A. 4), certiorari granted, 377 U.S. 903. The issue here presented is the propriety of the Board's conclusion that the evidence failed to establish that the Company was discriminatorily motivated, in whole or in part, when it terminated its Beckley operation and that, to the contrary, it was motivated by lawful economic considerations in taking this action. We show below that the

Board's analysis of the evidence was correct and is entitled to affirmance.

It is undisputed that when the Company commenced operations at its new warehouse in April, the structure was still under construction; only the shell was up (so that it could be used as a warehouse during the spring and summer) but the contractors had not yet installed the heating, lighting or sanitary facilities. It is equally clear that a labor dispute broke out at that time, which led to picketing at the new warehouse building and which caused the contractors to cease work. The Company continued its operations during the picketing by hiring permanent replacements for the strikers but, with the coming of autumn and the lack of heat, light and toilet facilities, a decision was made to shut down the Beckley warehouse. Thus, on September 24, the board of directors formally authorized the closing of the warehouse on October 1 because the Union's picket line had prevented the installation of needed equipment.⁹ Despite the directors' action, Vice-President Hunnicutt attempted to keep the warehouse open by requesting, on October 1, that the Union lift its picket line long enough for the contractors to finish work on the building.¹⁰ Un-

⁹ Petitioner contends that the minutes of the directors' meeting disclose a discriminatory motive. We show below that this contention lacks merit.

¹⁰ Hunnicutt refused to have the warehouse construction completed by nonunion contractors because, as he and Brown credibly testified, he had had enough labor troubles and he didn't want to risk more troubles with the building trades unions by dealing with nonunion contractors (J.A. 435; 161, 175-176, 371-372, 394).

ion business agent Rebhan flatly rejected this request, saying that there would be pickets at the warehouse "all winter long" (J.A. 118-119). The next day, October 2, two of the Company's stockholder-officers reported to Hunnicutt that their inspection of the Beckley warehouse on October 1 disclosed adverse and inefficient operating conditions, and two of Hunnicutt's associates advised him that the warehouse could not operate through the winter without heat, light or proper sanitary facilities. At this point, Hunnicutt called Smith and ordered that all but two of the employees be laid off on October 4, and that these two employees help Smith and Blevins to "run out the stock." It was at this point in time that the decision to close the warehouse was final. Most of the layoffs occurred on October 4, but the warehouse continued to operate until October 10, with supervisors Smith and Blevins, assisted by employees Brown and Ronald Keffer, running out the stock. It was not until after the closing and layoffs had been announced on October 4 that the employees joined the Union and the requests for bargaining were made.

These facts amply demonstrate the propriety of the Board's finding (J.A. 436) that Hunnicutt's final decision on October 2 to close the warehouse "was taken reluctantly and was forced upon him by the circumstances created by the Union's activity" in preventing the installation of necessary facilities. Although the board of directors had, on September 24, authorized the closing effective October 1, Hunnicutt attempted to keep the warehouse open, but his request that the Union cooperate to permit completion of the building

was summarily rejected by the Union on October 1. When, on October 2, the Taylors reported the adverse conditions and the employee complaints, and with the knowledge that the warehouse could not operate without proper heat, light and sanitary facilities, Hunnicutt ordered the closing. It is clear, we submit, that had the Union agreed to lift its picket line temporarily to permit the contractors to complete construction of the warehouse, the decision to close the warehouse would not have been made. We do not mean, of course, that the Union was under any obligation to acquiesce in the Company's request. But these circumstances fully warranted the Board's conclusion that the "shutdown decision was motivated solely by lawful economic considerations—the existence of highly unsatisfactory operating conditions resulting from the absence of heating, lighting, and sanitary facilities at the plant" (J.A. 461).

Petitioner attacks the Board's conclusions on essentially four grounds. We consider these below.

1. At the outset, petitioner argues (Br., pp. 34-37) that the language of the board of directors' September 24 resolution reveals a dual motive for the shutdown, i. e., the *fact* that the Union was seeking recognition as well as the adverse economic *effect* that the picketing was having. While we agree, as did the Examiner (J.A. 444), with petitioner's statement of the law regarding dual motivations (Br., pp. 33-34), we submit that the plain words of the minutes of the directors' meeting provides no support for a finding of a discriminatory motive. The minutes (J.A. 414) read, in relevant part, that the chairman:

advised concerning the Teamsters Union activity at the plant, and not being able to install heat and proper lighting in the plant due to the picket line of the Teamsters Union, it is impossible to operate from this plant.

Petitioner's argument—that the use of the connective “and” reveals that two separate elements (one of which was to avoid dealing with the Union) were considered by the directors in reaching their decision to close the warehouse—is, we submit, based on a grammatical technicality which is unsupported in either logic or the record. For, at the time the directors took this action, the only effect the Union was having by its picketing was to prevent the contractors from completing construction. Replacements had been hired for the original strikers and business was proceeding as usual. The election had been held some three weeks earlier and the Union had lost. It is true, as petitioner points out (Br., p. 35), that it had filed objections to the election and that the election was in fact set aside. But this latter event did not occur until the Board took official action, first in the intermediate report which issued on May 13, 1963, and then in the Board's decision herein, dated January 3, 1964. Thus, the setting aside of the election can hardly be shown to have been a factor of any significance in September 1962.

Nor is petitioner accurate in stating (Br., p. 36) “that organization of the replacements loomed large” at the time of the directors' meeting, or, indeed, at any other time. For the Union had just lost the election, at which the replacements had voted, by a vote

of 8 to 4 (Pet. Br., p. 7), and it was not until *after* the shutdown decision and the layoffs had been announced that the replacements looked favorably upon the Union.¹¹

In short, petitioner seeks to create an unfair labor practice out of a distorted and overly technical reading of the minutes of the September 24 meeting. This attempt, we submit, must fail. If indeed the minutes "resolve the question" (Pet. Br., p. 35), they do so adversely to petitioner's interest.

2. Petitioner attacks the significance of the inadequate heating, lighting and sanitary facilities in the Company's decision to shut down the warehouse. It urges that these factors were insubstantial and were mere pretexts seized upon to mask a discriminatory motive. (Pet. Br., pp. 43-46.)

(a) Petitioner first argues that adequate facilities existed, that "there were light fixtures, there were usable lavatories and there were three salamanders and three gas heaters" in the warehouse (Pet. Br., p. 46, n. 13). The "light fixtures" were a few strips of unshaded bulbs powered by a portable generator which had been left by one of the contractors and which were hardly adequate for the purposes of working, particularly during the autumn and winter

¹¹ Indeed, the record affirmatively shows that the replacements feared the Union, in that if it became the bargaining representative they might lose their jobs to the strikers whom they had replaced (*supra*, p. 4 n. 4). As employee Milam testified, prior to October 4, none of the employees had even considered joining the Union, which they considered to be "a bunch of damn thugs [who] couldn't help us any if we joined them" (J.A. 323-324).

months (J.A. 359). With respect to the "usable lavatories," the record shows that the septic tank had not been completed and that the lavatories had been used by the employees against the orders of their supervisors and contrary to the direction of local health authorities (J.A. 357-358).¹² And, as noted by the Examiner, "It is common knowledge that freezing weather can render an unprotected sanitary system inoperable."¹³ Finally, the "salamanders," which had

¹² That the Company acquiesced in its employees' use of these incomplete facilities can only be considered an attempt to make the best of a bad situation in order to continue its operations.

¹³ The printer inadvertently failed to print in the Joint Appendix footnote 21 of the intermediate report. The footnote, which should have appeared at J.A. 443 as a footnote to the last word on line 12 of that page, reads in its entirety as follows:

In view of the cogent testimony supporting this conclusion, I cannot accept the Union's argument that physical conditions at the warehouse were so inconsequential as not to be a factor in the shutdown, and that they were put forth at the time and at the hearing as mere pretexts. While incomplete sanitary facilities may not have been a weighty factor at the time of the September decision to close, since the record shows employees had used them since May against orders but with the acquiescence of immediate supervisors, and there is no proof that local health authorities had taken any steps to make Respondent complete the sanitation system to prevent it from using unsanitary or unapproved facilities, I am satisfied that this condition loomed large in October, with the approach of freezing weather. It is common knowledge that freezing weather can render an unprotected sanitation system inoperable, as easily as bursting bottled goods.

been used by the contractors to dry out concrete (J.A. 360) and had been left in the warehouse, were used and provided some heat (J.A. 247-248), but the three gas heaters to which petitioner refers and which had been moved from the old building to the new warehouse (J.A. 246), had never been installed (J.A. 248). The Board's finding that these facilities were inadequate is manifestly correct.

(b) Petitioner next argues that while the inadequate facilities might have necessitated closing the warehouse some time in mid-winter, an adverse inference should be drawn from the fact that the decision to close was made in early autumn while the weather was still balmy and the temperatures well above the freezing mark (Pet. Br., pp. 45-46). But official weather bureau records, of which the Examiner took notice (J.A. 442, n. 20), disclose that sub-freezing temperatures—at which bottled goods are liable to freeze and burst—occurred in the Beckley area as early as October (7 days), again in November (16 days), and in December (29 days, with 3 days of zero weather and one day of 14 below zero). Viewed in this light, the Company's action in taking into consideration the imminence of cold weather was eminently reasonable and hardly premature.

3. In seeking to establish a discriminatory motive, the Union further argues that Hunnicutt procrastinated in ordering the warehouse closed "until the employees' selection of the Union on October 5 cured his indecision" (Br., p. 38). As we have shown, however, the record is to the contrary. While it is true that Hunnicutt did not act immediately upon the directors'

closing resolution, his failure to act was due to his hope that the Union would agree to permit completion of the construction. On October 2, the Union having rejected his request, the Taylors having made their report, and the officials of the Princeton plant having added their advice and opinion, Hunnicutt ordered the warehouse closed. All of this occurred well before any of the employees joined the Union; as noted above, Milam joined on October 4 after learning that he was to be laid off, and the Keffers, Lukach, Brown and Davis joined on October 5. It is idle, we submit, for petitioner to contend that events which occurred subsequent to the announcement of the shutdown decision could have impelled or motivated that decision. And it is of no moment that the Beckley warehouse was not actually shut down until October 10, for it is clear that the delay was engendered by a desire to "run out the stock" at the warehouse. To the extent that the adequate servicing of customers from Beckley, in order to run out the stock, necessitated additional merchandise, such stock was sent over from Princeton.¹⁴

4. Finally, petitioner would have it that a discriminatory motive is conclusively established by Hunni-

¹⁴ As Hunnicutt testified, when asked how to go about running out stock: "I would do my deadlevel best to keep cutting down, picking up empties is a long drawn out affair, running out stock. You've got to keep every item on your trucks because some people will want this, and some will want that. You can't just have one brand. When you've got seven or eight or nine different lines, you've got to have some of everything. It's a slow process of whittling it down. You don't do it overnight. You have to keep whittling down, and cutting down until you get it all out." (J.A. 374.)

cutt's demonstrated anti-union animus, by his pre-election promises and threats (which were found to be violative of Section 8(a)(1) and which warranted setting aside the election), and particularly by his statements that he would close the plant rather than deal with the Union (Pet. Br., pp. 41-42). It is true, as petitioner points out, that Hunnicutt's unlawful conduct is a relevant consideration in determining the Company's motivation for the closing of the warehouse. But the record shows beyond any doubt that it was so considered. Thus, the Examiner carefully evaluated Hunnicutt's "animus towards the Union," his statements "indicative of retaliation," and his refusal to bargain on and after October 7 (J.A. 441-442), and he concluded that these circumstances established a "*prima facie* case of discriminatory motive for the shutdown, which required [the Company] to go forward with substantial evidence to rebut it" (J.A. 442). Thereafter, the Examiner, with equal care, considered the evidence presented by the Company in support of its defense of economic motivation—i. e., the uncompleted construction, Hunnicutt's unsuccessful attempt to keep the warehouse open and the Union's rejection of his request, the fact that Hunnicutt offered Brown a job at the Princeton plant and promised Ronald Keffer a job if the Beckley plant reopened although Hunnicutt knew that both men had joined the Union—and concluded that the *prima facie* case had been rebutted (J.A. 442-447). It is settled law that "[t]he evaluation of such evidence is a process peculiarly within the seasoned experience of the

Board." *East Bay Union of Machinists, Local 1304 v. N.L.R.B.* (*supra*, p. 13), 116 U.S. App. D.C. at 202, 322 F. 2d at 415; accord, *International Union of United Brewery Workers v. N.L.R.B.*, 111 U.S. App. D.C. 383, 387-388, 298 F. 2d 297, 301-302, certiorari denied, 369 U.S. 843; *Local 833, U.A.W. v. N.L.R.B.*, 112 U.S. App. D.C. 107, 113, 300 F. 2d 699, 705, certiorari denied, 370 U.S. 911. We submit that the Examiner's conclusion, adopted by the Board, is supported by the record as a whole and is entitled to affirmation here.

II. The Board Properly Found That the Company Did Not Violate Section 8(a)(1) of the Act by Obtaining Signed Statements From Four Employees Confirming Their Union Affiliation

The Board found that the Company did not violate Section 8(a)(1) by Smith's October 6 request that four of the employees (Brown, Davis and the two Keffers) sign statements regarding their union affiliation. When Smith asked for the statements, he told the employees that Hunnicutt had made the request in order to have their union authorization cards verified by a justice of the peace (J.A. 153, 251, 254).¹⁵ Petitioner would have it that this "polling," without more, constituted coercive interrogation because it exposed the identities of the union adherents and subjected them to the possibility of reprisals (Pet. Br., pp. 47-50). But it is undisputed that the employees,

¹⁵ Ronald Keffer testified that when he signed the statement he knew that it was to be used for the purpose of verifying his authorization card (J.A. 439; 251, 254).

far from hiding their union adherence, volunteered to Plant Manager Smith the night before that they had just signed union authorization cards (J.A. 428, n. 10; 229). In these circumstances, it is idle for petitioner to claim that the Company violated the Act by requesting its employees to confirm what they had freely revealed the night before. *Scott & Williams, Inc.*, 99 NLRB 919, 939-940; and see *Bourne v. N.L.R.B.*, 332 F. 2d 47, 48 (C.A. 2). The Board's dismissal of this allegation of the complaint was proper.

III. The Board's Order Is Valid and Proper

The Board's order, in addition to the usual cease and desist provisions, requires, in relevant part, that if the Company resumes operations at its Beckley warehouse, it shall notify the Union of that fact, bargain with the Union as the exclusive bargaining representative, and offer the terminated employees immediate and full reinstatement before any other employees are hired (J.A. 464). Petitioner characterizes this portion of the Board's order as a "sterile remedy which fails to effectuate the Act's policies" (Br., p. 53). Petitioner seeks the entry of a *Fibreboard*-type order,¹⁶ i. e., an order directing the Company to resume its operations at Beckley and then to bargain with the Union about whether or not to terminate that operation (Br., pp. 54-55). In this portion of its argument, petitioner assumes (Br., p. 51) the pro-

¹⁶ *East Bay Union of Machinists, Local 1304 v. N.L.R.B. (Fibreboard Paper Products Corp.)*, *supra*, p. 13.

priety of the Board's finding that the Company's decision to close the Beckley warehouse was economically, and not discriminatorily, motivated; it argues only that a resumption-of-operations order is warranted to remedy the refusal-to-bargain violation found by the Board.¹⁷ As we have shown (*supra*, pp. 13-23), the Board's dismissal of the Section 8(a) (3) allegations of the complaint was proper; we now show that the Board's order is a valid exercise of the discretion vested in it by Congress in the framing of remedies and is, therefore, entitled to stand.

The Company first refused to bargain on October 7, when Hunnicutt's rejection of Harris' October 6 request was relayed to Harris by Smith (J.A. 438); at this time, however, the decision to shut down had already been made and was in the process of being effectuated. The Board found a second refusal to bargain on October 10, when the Company actually ceased its Beckley operation, because it had done so without consulting the Union with which it was now obligated to bargain (J.A. 448). In fashioning a remedy for these refusals to bargain, the Board noted that the Company's decision to shut down the Beckley warehouse had been reached well before its obligation to bargain with the Union had matured, in fact before the Union represented any of the employees

¹⁷ See *Town & Country Mfg. Co. v. N.L.R.B.*, 316 F. 2d 846, 847 (C.A. 5), enforcing 136 NLRB 1022, 1029-1030, where a resumption-of-operations order was issued and enforced after a finding that the employer had violated Section 8(a) (3), as well as Section 8(a) (5), by discriminatorily subcontracting out a portion of its operations.

(J.A. 461).¹⁸ The Board noted further that the decision to shut down was "motivated solely by lawful economic considerations—the existence of highly unsatisfactory operating conditions," and that the Company's inability to remedy these conditions stemmed from the picket line which the Union had established and which it refused to lift temporarily to permit completion of construction (J.A. 461). These circumstances led the Board to reject the Union's contention that the Company should be ordered to resume operations at Beckley as part of the remedial order.

In devising a remedy to restore, to the extent possible, the situation which would have obtained but for the unlawful refusals to bargain (*Phelps-Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 194), the Board considered the situation which prevailed at the time the obligation to bargain matured. Since the shutdown was virtually a *fait accompli* before the Company had any obligation to bargain, the conditional relief ordered by the Board properly redeems the status quo. To go beyond this and to impose the more far-reaching provisions suggested by the Union (Br., pp. 56-58) would, we submit, be unwarranted.

The facts of the instant case distinguish it from *Fibreboard*, upon which petitioner relies as precedent for its assertion that a resumption-of-operations order must issue to remedy the Section 8(a)

¹⁸ As shown above (pp. 14-15), the final decision to close the warehouse was made on October 2; the employees did not join the Union until October 4 and 5; and the demand for recognition following the verification of the cards was made on October 6 and rejected on October 7.

(5) violation. In *Fibreboard*, the employer, without notice to or consultation with the union which had represented its employees for more than 20 years, subcontracted out its maintenance operations, terminated its own maintenance operations and laid off its maintenance employees. Although finding that the subcontracting decision was economically, and not discriminatorily, motivated, the Board held that the employer had violated its statutory bargaining obligation by failing to negotiate with the union concerning its decision to subcontract out unit work. (138 NLRB 550, 551.) In ordering the employer to resume its maintenance operations, to reinstate the employees with back pay, and then to bargain with the union about subcontracting out the work, the Board noted that the employees' loss of employment "stemmed directly from their employer's unlawful action in bypassing their bargaining agent" (138 NLRB at 155). In the instant case, by contrast, the shutdown did not result from any refusal to bargain for, as shown above, the decision was final and in the process of being effectuated well before the obligation to bargain matured, and, indeed, before any of the employees had even joined the Union. Hence, as in *Renton News Record*, 136 NLRB 1294, and *Lori-Ann of Miami, Inc.*, 137 NLRB 1099, it was within the Board's discretion to decline to order a resumption of operations based solely on a Section 8(a)(5) violation."

" In *Renton*, the employers shut down their composing rooms, terminated the employees employed there, and contracted out their composition work to another company, all

This case does not present, contrary to petitioner's assertion (Br., p. 30), "the classic case of a runaway shop." Cf. *Sidele Fashions, Inc.*, 133 NLRB 547, 552, enforced *sub nom. Philadelphia Dress Joint Board v. N.L.R.B.*, 305 F. 2d 825 (C.A. 3). For, as we have shown, the decision to shut down was made solely for economic reasons and was unaffected by the Union's organization of the employees. It is of no moment that the Company has decided to take the inconvenient

without notice to or consultation with the union which represented the composing room employees. Although this failure to bargain was found violative of Section 8(a)(5), the Board did not order the employers to resume operations, but only to bargain with the union concerning the impact of the termination of operations upon the affected employees. 136 NLRB at 1298. The Board noted that this order was a departure from its usual practice, but held that it was warranted by the facts of the particular case, here the fact that the employers were faced with the choice of either automating their composing room operations (i.e., subcontracting out to a company using a new type of press) or going out of business. In these circumstances, held the Board, the issuance of a resumption-of-operations order "would be punitive rather than remedial." (136 NLRB at 1297-1298.)

In *Lori-Ann*, the Board found that the employer's shutdown of its plant and transfer of operations to another company was not discriminatorily motivated, but that the employer had violated Section 8(a)(5) by failing to notify and bargain with the union concerning the shutdown. The Board's order in that case directed the employer, "if and when" it resumed operations, to bargain with the union (137 NLRB at 1115), an order almost identical with the one herein. And see *Fairbanks Dairy*, 146 NLRB No. 111, 55 LRRM 1437, where, in the circumstances of the case, the Board did not order a return to the status quo to remedy a unilateral change in employment conditions which violated Section 8(a)(5) of the Act.

(and expensive) expedient of servicing its Beckley distributorship from the Princeton plant, some 40 miles away (J.A. 446), for it is the shutdown itself, and not the continuation of operations at some other place, that is in issue here.²⁰ Significantly, however, the Company has not hired new employees to service the Beckley area from Princeton. The record shows that Smith and Blevins, who were formerly sales manager and route supervisor, respectively, at Beckley, are now driving trucks to that area, and three other regular Princeton drivers have added parts of the Beckley area to their former routes (*supra*, p. 9).²¹

Essentially, it is petitioner's contention that whenever a Section 8(a)(5) violation based on a plant closing is found, a resumption-of-operations order ought automatically to issue. This, as we have shown, is not the case (see *Renton News Record*, 136 NLRB 1294, 1297-1298; *Lori-Ann of Miami, Inc.*, 137 NLRB 1099, 1100, n. 1, 1115), nor ought it to be. It is the

²⁰ Although petitioner states (Br., p. 53, n. 15) that the Board did not consider the fact that the Company was still doing business in the Beckley area, the decision itself reveals that that fact was noted and rejected as irrelevant to the issue of the legality of the shutdown (J.A. 446).

²¹ Petitioner views as significant the fact that "none of the employees who signed the statements [about their union adherence] are now working for the Beckley Corporation in Princeton whereas supervisors Smith and Blevins [and another driver who had not been employed at Beckley] are employed" (Br., p. 50). But this overlooks the fact that Hunnicutt offered Brown, who had signed one of these statements, a job at Princeton, and that Brown turned it down.

Board's duty to devise remedies which are "adapted to the situation which calls for redress" (*N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 348) and this, we submit, is what it has done here. The resumption-of-operations order pressed for by petitioner, or any of the other "lesser" remedies it proposes (Br., pp. 56-58), might well be appropriate in other situations. But it is for the Board to tailor the remedy in each case to the facts of that case. In view of the foregoing, we submit that the Board has fulfilled its obligation here and, therefore, that its order is entitled to stand.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition to review and set aside the Board's order should be denied.

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